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DEPARTMENT OF EDUCATION

34 CFR Part 200

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[Docket ID ED-2013-OESE-0119]

Title I--Improving the Academic Achievement of the Disadvantaged (Migrant Education Program)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to implement the Migrant Student Information Exchange (MSIX), a nationwide, electronic records exchange mechanism mandated under title I, part C, of the Elementary and Secondary Education Act of 1965, as amended (ESEA). As a condition of receiving a grant of funds under the Migrant Education Program (MEP), each State educational agency (SEA) must collect, maintain, and submit minimum educational and health information to MSIX within established time frames. The regulations are designed to facilitate timely school enrollment, grade and course placement, accrual of secondary course credits, and participation in the MEP for migratory children. Additionally, the regulations ultimately will help the

Department to determine more accurate migratory child counts and meet other MEP reporting requirements.

DATES: These regulations are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

However, affected parties do not have to comply with the information collection requirements in §200.85 until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

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If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary:

Purpose of This Regulatory Action: The MEP is a formula grant program authorized under part C of title I of the ESEA. The purpose of the program is to ensure, among

other things, that all migratory children have the opportunity to meet the same challenging academic standards that all children are expected to meet, and to prepare them for successful transition to postsecondary education or employment. The purpose of this regulatory action is to update the current MEP regulations in order to fully implement MSIX, a Web-based platform established and maintained by the Department that links States' migrant student record systems to facilitate the national exchange of educational and health information for migratory children. These regulations are necessary for the Department to effectively implement the requirement in section 1308(b) of the ESEA that the Secretary ensure the linkage of migrant student record systems and for the effective implementation of the MEP by States and local operating agencies (LOAs) serving migratory children. In addition, section 1304(b)(3) of the ESEA requires SEAs to provide for educational continuity through the timely transfer of pertinent school records, including information on health, when children move from one school to another, whether or not such move occurs during the regular school year. Thus, this congressionally mandated records transfer system will help SEAs, local educational agencies (LEAs), and LOAs meet the needs of migratory children by having

complete, accurate, and up-to-date educational and health information immediately available to school and program staff where migratory children enroll after they move. As defined in section 1309(1) of the ESEA, an LOA is a recipient of MEP funds, which may be an LEA to which an SEA makes an MEP subgrant, or a public or private agency with which an SEA or the Secretary makes an arrangement to carry out an MEP project. A more complete background on migratory children and their unique needs as they relate to records transfer may be found in the Background section.

Summary of the Major Provisions of This Regulatory Action: Until now, all but one State receiving MEP funds have voluntarily entered some minimum data elements (MDEs) into MSIX. However, there is not consistency in the timeframes within which States enter these data, or in the completeness of data that each State enters for its migratory children. These regulations establish basic standards governing the collection of MDEs that States receiving MEP funds will need to submit to MSIX, so that when migratory children move and enroll in new schools and programs, staff in those schools and programs may make timely and appropriate decisions to facilitate school enrollment, grade and course placement, accrual of secondary course credits, and participation in the MEP.

For purposes of start-up submissions, an SEA must submit all MDEs applicable to a migratory child's age¹ and grade level (i.e., "applicable MDEs") within 90 calendar days of the effective date of these regulations for all migratory children who are eligible to receive MEP services in the State on the effective date of the regulations, other than through continuation of services provided under section 1304(e) of the ESEA. In addition, after the effective date of the regulations, SEAs must adhere to specific timeframes to collect and submit to MSIX the applicable MDEs for: migratory children for whom an SEA has approved a new Certificate of Eligibility (COE), end of term submissions, and change of residence submissions. The timelines required for these subsequent data submissions range from four working days to 30 calendar days. The regulations also require that SEAs establish procedures, develop and disseminate guidance, and provide training in the use of MSIX Consolidated Student Records. SEAs must also use, and require their LOAs to use, reasonable methods to ensure data quality and data protection. Finally, the

¹ So that their children have ready access to school programs, migratory parents may present to LEAs a variety of documentation to prove that their children fall within state- or district-mandated minimum and maximum age requirements. The kinds of documents LEAs generally accept include a religious, hospital, or physician's certificate showing date of birth; an entry in a family bible; an adoption record; an affidavit from a parent; a birth certificate; or previously verified school records.

regulations contain specific requirements for responding to MSIX record correction requests from parents, guardians, and migratory children. A more detailed discussion of the major provisions of this regulatory action may be found in the Analysis of Comments and Changes section of this preamble.

Costs and Benefits: We have estimated the cost and burden associated with these regulations based on data from MSIX, Consolidated State Performance Reports (CSPRs), and the U.S. Bureau of Labor Statistics National Compensation Survey: Occupational Earnings in the United States. We estimate that the total cost to participating SEAs of implementing these regulations is approximately \$17,363,639 for the first year, and \$16,431,718 annually thereafter. The estimated burden per migratory child, amortized over three years, is approximately one hour and 30 minutes, at an approximate cost of \$46.50 per year. These estimates cover the costs of all requirements in these regulations, including the costs of information collection activities, which are discussed separately under the heading Paperwork Reduction Act of 1995. Estimates are based on the initial three-year period for which we anticipate OMB will approve the information collection associated with these regulations.

The requirement that agencies serving migratory children use MSIX and the Consolidated Student Records generated by MSIX will ensure not only that information in MSIX is used, but also that States and LOAs acquire an interest in ensuring the quality and timeliness of the data they provide to and obtain from the system. Other benefits include access to Consolidated Student Records that are current, accurate, complete, and secure, and that contain data that may be currently maintained in different systems within States; for example, State assessment data may not be maintained in the same system as student health records. States' previously voluntary participation in MSIX reflects the value they see in having this information on migratory children in one centralized location, which enables them to better serve one of their most vulnerable populations.

For these reasons, the Department believes that the benefits of these regulations will significantly outweigh the estimated costs, much of which will be met with Federal resources. A more detailed discussion of the costs and benefits of these regulations may be found in the Regulatory Impact Analysis section of this preamble.

Background:

A "migratory child" is defined by section 1309(2) of the ESEA, as amended by the No Child Left Behind Act

(NCLB),² and 34 CFR 200.81 as a child who is, or whose parent or spouse is, a migratory agricultural worker or migratory fisher; and who has moved within the preceding 36 months in order to obtain, or to accompany such parent or spouse in order to obtain, seasonal or temporary employment in agriculture or fishing work. In addition, the definition of "child" in 34 CFR 200.103(a), unchanged by ESSA, further requires a migratory child to be not older than age 21 and be entitled to a free public education through grade 12, or be below the age and grade level at which the LEA provides a free public education. Under the MEP, each SEA is responsible for: (1) determining whether a child meets this definition of a migratory child, and (2) documenting this information on a COE established by the Secretary (and maintaining any additional documentation needed to confirm that the child meets this definition of a migratory child (see 34 CFR 200.89(c))). In this document, when we refer to a child "eligible for the MEP" or an "MEP-eligible" child, we mean that a State has determined that the child meets the programmatic definition of a migratory

² On December 10, 2015, the President signed the Every Student Succeeds Act (ESSA), Public Law 114-95, (2015), which amends the Elementary and Secondary Education Act of 1965 (ESEA). The ESSA amends the Migrant Education Program and those amendments take effect on July 1, 2017. Pub. L . 114-113. Throughout this document we refer to the ESEA when referencing provisions that are included in both NCLB and ESEA. When referencing provisions included under only NCLB, we refer to the "ESEA, as amended by NCLB."

child, and has documented the child's eligibility for the MEP on a COE. Participation in the MEP is voluntary, and a migratory parent or guardian (or in the case of emancipated youth, migratory children themselves) may choose not to participate in the MEP, in which case they will not be eligible to receive MEP services or be included in the State's count of migratory children. A guardian is defined in Chapter II, Section B of the MEP Non-Regulatory Guidance as any person who stands in the place of the child's parent ("in loco parentis"), whether by voluntarily accepting responsibility for the child's welfare or by a court order, and a legal document establishing guardianship is not necessary to establish an individual as the child's guardian for purposes of the MEP. We apply the same definition to the term "guardian" used throughout these regulations.

The educational needs of migratory children present unique challenges for educators and our Nation's schools. Given the nature of their employment, migratory workers and their families often settle in a single community for a short period of time. One consequence of this mobile lifestyle is that migratory children frequently enroll in new schools and school districts without adequate, and in many cases any, documentation of their educational and

health history. School staff at all levels need basic enrollment data, and typically proof of immunizations, to place students in the correct grade or course in a timely manner. Migrant educators have stressed that students in secondary grades have the greatest need for the timely exchange of records because they have limited time to correct mistakes that school officials make if they lack information needed for proper grade placement, course selection, and accrual of course credits required for high school graduation. Because migratory children may move at any time, including during the summer term when many schools are closed, it is imperative to have a reliable system with which SEA, LEA, and LOA staff may access up-to-date educational and health information for migratory children in a timely manner. MEPs operate throughout the year, including during the summer; having timely access to a migratory child's educational and health information will help ensure that MEPs can provide migratory children with services that appropriately address their unique needs.

MSIX helps meet the needs of migratory children by making current educational and health information on those children immediately available to school and program staff where migratory children enroll after they move. MSIX allows SEAs to upload the required MDEs from their own

existing State student record systems into a single data repository where information on each migratory child is maintained, organized, and compiled. As a Web-based platform, MSIX allows authorized users to access a migratory child's MSIX record via a Web browser. Specifically, from the MDEs that States collect and maintain on each migratory child in their own State student record systems and that are uploaded into the system, MSIX generates a "Consolidated Student Record." This Consolidated Student Record compiles educational and health-related MDEs from the various schools and migrant education programs in which a migratory child has enrolled, within and across States.

The Consolidated Student Record serves as a starting point to facilitate school enrollment, grade and course placement, credit accrual, and participation in the MEP for migratory children. However, it is not necessarily the sole source of data that educators would use to make these decisions. For example, the Consolidated Student Record does not contain a child's immunization records or Individual Educational Plan (IEP); rather, it will alert the user to whether such records exist and from where they can be obtained. But, as a result of these regulations, a student's essential educational and health information will

be presented in a uniform format, and consolidated in a central location from existing record systems within and across States. The necessary information will be available in a timely manner, and the system will direct users to other necessary information from both records in, and outside of, the State.

On December 27, 2013, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (78 FR 79222). In the preamble of the NPRM, we discussed on pages 79224 through 79230 the major proposals to ensure that basic educational and health records of migratory children are available promptly to facilitate school enrollment, grade and course placement, credit accrual, and participation in the MEP. These final regulations maintain the same basic structure of the major proposals, and thus will require each SEA that receives a grant of MEP funds to--

- Collect, maintain, and submit current and updated MDEs for migratory children to MSIX within established timeframes;
- Ensure that all data submitted to MSIX are accurate and complete and that appropriate safeguards are in place to protect the integrity, security, and confidentiality of Consolidated Student Records in MSIX;

- Establish procedures for using, and requiring each of its subgrantees to use, Consolidated Student Records provided by MSIX; and

- Establish procedures for MSIX data correction by parents, guardians, and migratory children.

Additionally, we noted that final regulations will ultimately help the Department to produce national statistical data on the migratory population.

Significant Changes in the Regulations: The following is a summary of the significant changes in these final regulations from the regulations proposed in the NPRM. The rationale for each of these changes is discussed in the Analysis of Comments and Changes section of this preamble.

- Section 200.85(b)(1) has been amended to clarify the SEA's responsibility to collect and submit to MSIX the applicable MDEs for all eligible migratory children, regardless of the type of school in which the child is enrolled (e.g., public, private, or home school), or whether a child is enrolled in any school. We also have clarified how the SEA meets its responsibility to collect these records in the case of migratory children who are or were enrolled in private schools or home schools. In addition, we have added specific data collection methods

that an SEA must use in seeking to obtain the necessary educational and health information for eligible migratory children who attend, or previously attended, private schools.

- Section 200.85(b) (2) has been amended to limit the data collection requirements for every migratory child whom the SEA considers eligible for the MEP for purposes of start-up data submissions. We had proposed that SEAs be required to collect and submit to MSIX MDEs for every migratory child whom the SEA considered eligible for MEP services (in accordance with 34 CFR 200.89(c)) within one year prior to the effective date of the final regulations. As provided in these final regulations, SEAs must instead collect and submit to MSIX, as their start-up submissions, MDEs for every migratory child whom the SEA considers eligible to receive MEP services in the State on the effective date of these regulations, other than through continuation of services provided under section 1304(e) of the ESEA. Thus, SEAs will not need to go back one year to identify the migratory children for whom they must make start-up submissions. If an SEA has learned that a child whom it had found to be MEP-eligible is no longer eligible for the MEP (e.g., the child is over age 21, is no longer entitled to a free public education through grade 12) or is

not residing in the State as of the effective date of these regulations, the SEA does not need to submit to MSIX start-up MDEs for that child.

Because of this change to the requirement for start-up submissions, proposed section 200.85(b)(2)(ii) is no longer applicable. In this subsection, we had proposed requiring SEAs to make start-up submissions to MSIX for a migratory child whom the State considered eligible for MEP services within a year prior to the effective date of these regulations, whether or not the SEA has a current COE for the child at the time the SEA submits the start-up data. Accordingly, proposed section 200.85(b)(2)(ii) has been removed from these final regulations.

- Section 200.85(b)(3)(i) has been amended to replace the term "newly documented migratory children" with "migratory children for whom an SEA has approved a new Certificate of Eligibility". The Department considers the two terms to be synonymous, but has implemented the change for purposes of clarity, based on confusion expressed in comments.

- Section 200.85(b)(3)(ii)(B) has been amended to remove the second sentence of the proposed regulation, which required SEAs to submit MDE updates and newly available MDEs for any child who continues to receive MEP

services under section 1304(e) of the ESEA after expiration of MEP eligibility. SEAs will still be required to submit MDE updates and newly available MDEs through the end of the school year for a child whose eligibility expired before the end of the school year, regardless of whether the child continued to receive MEP services under ESEA section 1304(e).

Public Comment: In response to our invitation in the NPRM, more than 300 parties submitted comments on the proposed regulations. We group major issues according to subject. We discuss other substantive issues under the specific section number to which they pertain. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes

Support for the Proposed Regulations

Comments: Several commenters expressed support for these regulations. Commenters supported the overall intent and purpose of the regulations to meet the unique needs of migratory children. One commenter noted that full implementation of the Migrant Student Information Exchange (MSIX) is long overdue, given that Congress authorized the system in 2001. Commenters also supported specific aspects of the regulations, such as records transfer for secondary students and the reporting activities required under

§200.85(b)(3) for newly documented children, and end of term and change of residence submissions.

Discussion: We appreciate the commenters' support for these regulations.

Changes: None.

Statutory Authority to Use MSIX for the Purposes Stated in the Notice of Proposed Rulemaking (NPRM)

Comments: A number of commenters disputed the Department's authority to use the system for some of the purposes stated in the NPRM, specifically: to provide stakeholders with census data and statistics on the national migratory population; to generate accurate child counts; and to meet other reporting requirements related to the national migratory child population. Commenters asserted that these purposes exceed the Department's authority under section 1308(b) of the Elementary and Secondary Education Act (ESEA), which directs the Department to implement an interstate migrant student exchange system. One commenter stated that broadening the purposes beyond those stated in the statute would violate the Administrative Procedure Act (APA).

In addition, one commenter interpreted the language of section 1308 of the ESEA, as amended by NCLB, which provides that the Secretary shall assist States in

developing effective methods for the electronic transfer of student records and in determining the number of migratory children, to mean that while the Secretary is authorized to assist States in these regards, the Secretary is not authorized to require States to use the system, as proposed in the NPRM.

Discussion: The Department appreciates, but disagrees with, these comments.

The Secretary is authorized to use MSIX data for the purpose of providing stakeholders with census data and statistics on the national migratory population and to meet other reporting requirements related to the national migratory child population. In administering the Migrant Education Program (MEP) and other Federal education programs, one of the Secretary's responsibilities is to provide the States, Congress, and the public with the most accurate information possible about the programs and the population they serve so that States, Congress, and the public may use this information to understand the programs and improve program operations. See, for example, section 431 of the Department of Education Organization Act (20 U.S.C. 1231a), which authorizes the Secretary to inform the public about federally supported education programs and collect data and information on applicable programs in

order to obtain objective measurements of the effectiveness of those programs in achieving their intended purposes. See also section 4 of the Government Performance and Results Act (GPRA) (31 U.S.C. 1116), which directs each Federal agency annually to report on how well each program has met its established performance targets.

For the MEP, having and reporting the most reliable information available is important not only to support the Department's monitoring efforts and to help States to properly administer their own grant and subgrant programs. It also is important to help inform Congress's appropriations and legislative decisions about the MEP and the results it is achieving. Provided the Secretary is satisfied that the information contained in MSIX is useful for obtaining and reporting these aggregate and non-personally identifiable data, the Secretary is authorized to use MSIX to carry out this duty.

To date, all States that receive MEP funds do so on the basis of the Secretary's approval of consolidated State applications submitted under section 9302 of the ESEA. Under section 9304(a)(6) of the ESEA, in exchange for annual receipt of MEP funds on the basis of a consolidated State plan, each State educational agency (SEA) provides an assurance that the SEA will "(A) make reports to the

Secretary as may be necessary to enable the Secretary to perform the Secretary's duties under each such program; and (B)... provide such information to the Secretary... as the Secretary may find necessary to carry out the Secretary's duties." This assurance mirrors the assurance required in single State applications under section 441(b)(6) of the General Education Provisions Act (20 U.S.C. 1232d(b)(6)). Moreover, regardless of whether each State chooses to seek MEP funding under the Every Student Succeeds Act (ESSA) under a comparable consolidated State application, section 433(b) of the General Education Provisions Act (20 U.S.C. 1231c) and 2 CFR 200.336 provide for comparable State reporting to the Secretary.

Regarding the use of MSIX data to secure reliable State child counts of migratory children, we also note that section 1303 of the ESEA builds State child counts into the State funding formula. In determining each State's MEP award, section 1303(e)(1) of the ESEA directs the Secretary to use data that most accurately reflects each State's migratory child count. While we do not propose immediately to use minimum data elements (MDEs) in MSIX for the purpose of generating migratory child counts, section 1303(e) of

the ESEA, as amended by NCLB,³ authorizes the Department to use MDEs in MSIX for this purpose if State counts generated from MSIX are more accurate than State counts now being submitted by each State in their Consolidated State Performance Reports (CSPRs) via EDFacts or that would be generated by any other source of data. Please see the discussion under Alternative Methods for Collecting and Reporting Data for the reasons the Department believes that State migratory child counts generated from MSIX will be more accurate than the migratory child counts that States currently submit via EDFacts.

Thus, the Secretary is authorized to collect data to provide stakeholders with census data and statistics on the national migratory population, to generate accurate migratory child counts, and to meet other reporting requirements related to the national migratory child population. To carry out these duties, the Secretary is generally authorized to collect these data using MSIX if MSIX is a repository of the best available data.

We believe that when MSIX is populated with the MDEs for all States' migratory children, it will contain the Nation's most robust, uniform, and comprehensive

³ Section 1303(f) of the ESEA, as amended by ESSA.

educational and health records for migratory children. We further believe MSIX is the most efficient and accurate way to meet the Department's administrative responsibilities discussed here. In addition, we note that, as much of the data required to meet these responsibilities is captured by MDEs, collecting the data through MSIX frees up MEP or other State funds that SEAs would otherwise use to generate reports to the Department. In response to comments that these data gathering and reporting purposes exceed the Department's authority under section 1308(b) of the ESEA, which directs the Department to implement an interstate migrant student exchange system, we also note that section 1308(b) does not proscribe the use of non-personally identifiable data contained in MSIX for purposes other than records transfer. Consequently, section 1308 does not affect the general authority of the Secretary, as described above, to use non-personally identifiable MSIX data for census purposes, reports, and generation of child counts.

Finally, we do not agree with the comment that section 1308 of the ESEA, as amended by NCLB, permits the Secretary only to assist States with developing effective methods for electronic transfer of student records and in determining migratory student child counts, but not to require States to use the system. While section 1308(b)(1) of the ESEA,

as amended by NCLB requires the Secretary to assist States in these endeavors, section 1308(b) of the ESEA--the specific authority for MSIX--goes much further. Specifically, section 1308(b)(2)(A) of the ESEA requires the Secretary to "ensure the linkage of migrant student record systems for the purpose of electronically exchanging, among the States, health and educational information regarding all migratory students." This provision requires States to use the system.

Changes: None.

Alternative Methods for Collecting and Reporting Data

Comments: A number of commenters expressed policy or cost concerns regarding the Department's intent to use MSIX to provide stakeholders with census data and statistics on the national migratory child population, to generate accurate child counts, and to meet other reporting requirements related to the national migratory child population.

A few commenters cautioned that collecting information via MSIX to generate child counts and to meet other reporting requirements would result in States focusing their MSIX efforts on child count data, overshadowing the records transfer purpose of the system. These commenters cited the failure of the former Migrant Student Records Transfer System (MSRTS) as a basis for their concerns.

Several commenters asserted that use of MSIX would amount to a duplication of effort, since States currently collect this information and report it to the Department through EDFacts, which populates the annual CSPR.

Several commenters provided specific reasons why they believe that State-level data systems and the CSPR are preferable methods for collecting and reporting the information needed for migratory child counts and other reporting requirements. Among the reasons cited by these commenters were the constant fluctuation of data contained in MSIX due to updating of records and the frequency of "near-matches" of migratory children on States' MSIX work lists that must be resolved by States prior to submitting MSIX child count data to the Department. A few commenters cited the Department's current use of the CSPR to collect data from States for the MEP as well as other Federal programs, and questioned why the Department no longer considers this data collection sufficient for the MEP.

Commenters also expressed concerns that migratory child counts collected from MSIX would be a "snapshot" of data--reflecting migratory child counts on a particular day, as opposed to data over a period of time--and thus an arbitrary reflection of States' actual numbers of migratory children, which would then unfairly impact States' MEP

allocations. One commenter also expressed concern that out-of-school youth (OSY) would be excluded from the data collected via MSIX.

Discussion: The Department appreciates these comments, but does not agree with them. First, we have carefully considered the lessons learned from the MSRTS, which the Department funded by contract with the Arkansas Department of Education until 1995, when Congress agreed with the Department that it should be terminated because it was too costly and underutilized. State use of MSRTS tended to focus too much on generating child counts based on data States provided to MSRTS after they identified children as eligible for the MEP, and too little on its intended purpose--the collection, transfer, and use of educational and health records on migratory children in making school enrollment, placement, and credit accrual decisions. In part, this may have been a natural consequence of the state of technology at the time; while large mainframe computer and terminal sites existed in each State for inputting and downloading data, the collection and reporting of information relied on a paper-based system that had to get print-out reports from terminal sites to the users. For too many migratory children, MSRTS included few educational

records. Where records were present, the system proved too slow and burdensome to be useful to school staff.

MSIX, on the other hand, is a Web-based platform. Building on technological advances over the past 20 years, we have designed MSIX and these regulations to prevent the recurrence of the problems that undermined MSRTS. In particular, the regulations are designed to ensure that MSIX users in schools and other project sites that migratory children attend will have ready access to complete, trustworthy, and up-to-date educational and health records, and that the transfer of those records from State records systems through MSIX and then to authorized users in school and project sites occurs speedily and efficiently.

We agree with commenters that the data reported to MSIX for purposes of generating migratory child counts and to meet reporting requirements must not duplicate data that States currently report annually to the Department in the CSPR via EDFacts. Use of MSIX, in fact, should cure many of the persistent problems we have had with the CSPR submissions, making MSIX a more accurate and reliable source of data available on migratory children.

Our ongoing collaboration with State MEP officials in the MSIX Data Quality Initiative (DQI) and Child Count

Reconciliation processes have revealed variation among States in what information they include on migratory children in State-level databases, and how these variations cause inconsistencies in what they report to the Department through the CSPR. The Department asked States to participate in the DQI, the purpose of which is to support States by providing assistance in: analyzing and assessing the quality and completeness of data in MSIX; identifying common issues causing data inaccuracies; identifying and assessing the root causes of data issues; providing more accurate and complete data on migratory children; and increasing the overall quality of MEP data. The MSIX Child Count Reconciliation process consists of four review rounds, in which States voluntarily participate, in order to assist the Department in understanding the process that each State uses to collect and report its child count to the Department via EDFacts. The goal of the process is to establish an accurate, consistent, unduplicated migratory child count through MSIX. This will allow the Department to produce national data on the migratory population.

Based on the DQI and Child Count Reconciliation processes, we have concluded that the data many States submit to the Department in their CSPRs reflect under- or over-counting of the number of eligible migratory children

because of a number of factors, including: (1) failure to submit unduplicated child counts; (2) failure to include in their child counts eligible migratory children who turn three years of age during the reporting period; (3) inconsistent treatment of children whose MEP eligibility has expired, but whom States still serve under the "continuation of services" provision of the MEP program statute (section 1304(e) of the ESEA); and (4) use of different and inconsistent criteria across States in calculating child counts. We have also noted cases in which States have reported in their CSPRs higher numbers of eligible migratory children enrolled in schools during the State-scheduled State assessment timeframe under title I, part A, than the number of eligible migratory children States reported in the corresponding grade levels.

Utilizing MSIX to generate counts of eligible migratory children will avoid these problems through use of a single and uniform set of MSIX internal procedures for calculating unduplicated State migratory child counts. These procedures involve the application of a "logic rule," which specifies the exact data fields and values that will be queried to generate child counts, including, but not limited to: qualifying arrival date within 36 months of the beginning of the performance period and eligibility

expiration date (used to determine whether a child was eligible for at least one day during the performance period); and enrollment, withdrawal, or residency date during the performance period (used to determine whether a child was resident in the State for at least one day during the performance period). If needed to verify these counts and investigate possible duplication, these MSIX procedures can trace preliminary State child counts back to student-level data--functionality that is not available for data that States submit to the Department in CSPRs via EDFacts. When States have submitted all required MDEs to MSIX, and the Department has determined that these data are complete, our intent is to use MSIX to extract data to generate State migratory child counts instead of, not in addition to, having States submit the corresponding data elements to the Department in their CSPRs. Doing so will reduce, rather than add to or duplicate, the total costs of State reporting.

We agree with the commenters who expressed the importance of resolving "near-matches" in MSIX (i.e., resolving which records of migratory children with similar identifying characteristics belong in a single Consolidated Student Record for one migratory child) prior to generating State migratory child counts. Indeed, one of the benefits

of MSIX is its capacity to avoid the creation of duplicate Consolidated Student Records for the same migratory child by generating "work lists" for States to resolve. These work lists provide States with a set of "near matches" (by comparing the MDEs uploaded for a newly identified migratory child with comparable data already in the system). By identifying such "near matches" and adding them to work lists for States to resolve, the system ensures that each migratory child has a single Consolidated Student Record that contains the complete course history, assessment, and other MDEs for that child. In doing so, MSIX is able to produce both a national unduplicated child count and more accurate State unduplicated child counts, neither of which can be achieved by the migratory child counts collected via the CSPR.

While we understand commenters' concerns about the generation of child counts using a "snapshot" of migratory child data for a single day, due to the constant fluctuation of information included in the records MSIX generates, the Department will follow very similar procedures to what States should now have in place to generate their child counts from their State databases for CSPR reporting. Data will be extracted from the system on a single day, but will capture the number of eligible

migratory children that were resident in the State for at least one day within the defined performance period (currently defined as the 12-month period September 1 through August 31); it will not be limited to only those migratory children that are eligible and resident in the State on the day that the data is extracted from MSIX.

Thus, MSIX is a significantly improved data source compared to currently available data submitted by States through their CSPRs via EDFacts because MSIX allows for unduplicated national counts of migratory children. Such unduplicated counts (1) are essential to the Department's ability to provide accurate reporting on the national program, (2) would be the most appropriate data for a needs assessment or evaluation of the program on a national level, and (3) will decrease costs to States by eliminating their need to report comparable data in their CSPRs.

Finally, in response to a commenter's concern about the exclusion of OSY from MSIX data collection, these regulations require States to submit MDEs for all eligible migratory children, including secondary school-aged migratory children who are not enrolled in school (i.e., OSY) and pre-school children.

Changes: None.

Privacy Concerns

Comments: One commenter expressed concern that MSIX would be used as a tracking tool, discriminating against minority groups (namely, Hispanics of Mexican descent), based on the Department's plans to use MSIX to provide stakeholders with census data and statistics on the national migratory population, to generate accurate child counts, and to use statistical data from MSIX to help meet reporting requirements. The commenter expressed concerns that requiring input of employment information for the parents of migratory children in MSIX and requiring eligible children to enroll in the program, constitute violations of privacy and Fourth Amendment rights (unwarranted search and seizure of information).

Discussion: The Department appreciates the commenter's concern for our Nation's migratory children and families. The commenter's concerns are understandable, given that in recent years, some States have attempted to use the collection of statistical data on immigrant children -- note, not specifically migratory children -- in a discriminatory manner. However, we do not intend for MSIX to ever be used in a discriminatory manner, and will make every effort to prevent such a use. The Department's position is consistent with its past support of the United States Department of Justice in challenging aforementioned

discriminatory State laws, such as Alabama's H.B. 56, Section 28. We do not agree that these regulations in any way constitute an invasion of privacy or violation of migratory parents' Fourth Amendment rights, and below we explain the safeguards in place to prevent MSIX from being used in a discriminatory manner.

Rather, MSIX is a vital resource that Congress directed the Department to implement in order to help meet the educational needs of migratory children. The Department does not require any parent to enroll a child in the MEP, nor does it require any emancipated youth to enroll on his or her own behalf. Migratory agricultural workers, fishers, and their families are asked to provide the necessary information to determine eligibility for the MEP on a voluntary basis, and this information is collected on the child's Certificate of Eligibility (COE) (OMB Control Number 1810-0662). While some of the information included on a COE is provided to MSIX as MDEs for the child, MDEs do not require the collection of specific employment information of migratory agricultural workers and fishers beyond that collected on the COE and, like the COE itself, do not include race or ethnicity data. Thus providing these data to MSIX does not constitute an

invasion of personal privacy or violate any Fourth Amendment safeguards.

The Department takes all precautions to protect the data contained in MSIX, consistent with the very limited uses permitted under the MSIX system of records notice published in the Federal Register under the Privacy Act on December 5, 2007 (72 FR 68572). In addition to the safeguards that ensure the physical security of the electronic data, the system limits data access to Department and contract staff on a "need to know" basis and, consistent with MSIX's Rules of Behavior that all States must follow, controls individual State and local users' ability to access records within the system by granting user names and passwords and assigning user roles to individuals that restrict access based on user category.

Finally, we note that §200.85(f) incorporates important requirements to help ensure that States protect the integrity, security, and confidentiality of migratory children's data in MSIX.

Changes: None.

Consultation with Stakeholders

Comments: Several commenters urged the Department to consult further with stakeholders, including MEP State Directors, prior to finalizing these regulations, regarding

the implementation of MSIX, the timelines contained in the proposed regulations, and potential barriers to implementation, such as State statutes or State student information systems. One commenter urged the Department to consult with stakeholders to ensure the accuracy of data collected for MSIX, and the use of such data for decision-making by schools.

Discussion: We appreciate the commenters' suggestions, but do not agree that further consultation is necessary prior to finalizing these regulations. We strongly value the opinions of MEP stakeholders, and understand that their input and support are vital to the successful implementation and continued use of MSIX. Since 2002, we have consulted with SEAs to identify an appropriate set of MDEs along with timelines needed to fulfill the statutory requirements for records exchange established when the ESEA was last reauthorized. The Department proposed the timelines associated with the various data submission requirements based on input from various stakeholders. These stakeholders included, most recently, representatives from eight States that responded to the Department's survey of State officials, as well as staff who have worked on records transfer issues at SEAs. In addition, since the inception of MSIX, the State User Group for Analysis and

Recommendation (SUGAR) has provided the Department with valuable information related to the MDEs and timelines, and we will continue to consult with that group and State MEP officials on MSIX-related issues in the future.

In addition to these other forms of consultation, the NPRM provided the formal vehicle required by the APA for receiving and considering feedback from all interested parties, including, but not limited to, MEP State Directors and personnel who work directly with the program. Our responses to specific substantive comments on the proposed regulations, including the timelines, are discussed in the respective sections that follow.

Although we do not believe that further consultation is necessary prior to the finalization of these regulations, we are committed to ongoing consultation with stakeholders on how to continue to improve MSIX, including with regard to data quality and the use of MSIX data by school staff, as the commenter recommended.

Changes: None.

Inclusion in MSIX of MEP-Eligible Children Enrolled in Home Schools and Private Schools

Comments: Many commenters objected to the proposal to include in MSIX the records of migratory children who attend home schools or private schools. Most of these

commenters questioned the legal basis for including records of migratory home school and private school students in the MSIX system. Several commenters asserted that, because home schools and private schools are not recipients of Federal funding, they should not be subject to Federal requirements, while others specifically cited the protections afforded to private, religious, and home schools by section 9506 of the ESEA.

Many of the commenters who expressed concerns about the reach of these regulations to include records of migratory home school and private school students asserted that the proposed regulations infringe upon the privacy of these students.

A few commenters expressed concerns about the precedent that these regulations would establish for future data collection on home school students. One commenter expressed concerns that under these regulations, home schooled migratory children are subject to requirements that do not apply to other home schooled children, and recommended that the records of migratory home schooled children should only be required to be provided to MSIX if and when such children enroll in public school.

Discussion: MSIX is a system that collects educational and health information about all eligible migratory children

and makes this information quickly available to staff of schools and programs in which migratory children enroll in order to help ensure their school enrollment, grade and course placement, accrual of secondary course credits, and proper participation in the MEP. To date, children whom States identify as MEP-eligible predominantly attend public schools, are not yet at an age to attend school, or are OSY. However, the type of school a migratory child attends--public, private, or home school--has no bearing on MEP eligibility.

Section 1308(b) of the ESEA provides that each SEA must implement the electronic exchange system established by the Secretary (i.e., MSIX) for the purpose of transferring among the States "health and educational information regarding all migratory students" (emphasis added). Therefore, the SEA has a responsibility to collect and submit into MSIX this information for all migratory students that the SEA has documented as MEP-eligible, regardless of where (or whether) the students attend school. If parents of migratory children (or in the case of emancipated youth, the children themselves) choose to participate in the MEP, the SEA must seek to include their records in MSIX.

In response to commenters who stated that home schools and private schools should not be subject to these requirements because such schools are not recipients of Federal funds, or because of the protections afforded to private, religious, and home schools by section 9506 of the ESEA, we clarify that these regulations do not impose requirements on such schools. Instead, the regulations impose requirements on SEAs to work with parents or emancipated youth themselves to help them arrange to have the private schools provide the applicable MDEs for MEP-eligible children to the SEA for uploading into MSIX, or to have them obtain these records and then provide them to the SEA so that the SEA can do so.

Although the preamble to the NPRM noted that the data submission requirements would apply to any migratory child whom the SEA considers eligible for the MEP, regardless of whether the child is enrolled in a K-12 public school, or in a private school or home school (78 FR 79225), the proposed regulations did not expressly address these requirements in regard to migratory home school and private school students. Accordingly, we are revising §200.85(b)(1) to clarify that SEAs must collect and submit to MSIX the applicable MDEs for all eligible migratory children, regardless of the type of school in which the

child is enrolled (e.g., public, private, or home school), or whether a child is enrolled in any school.

At the same time, although section 1308(b) of the ESEA creates a clear legal basis for including the records of these students in MSIX, we recognize that SEAs do not exercise the same kind of authority over private and home schools that they exercise over local educational agencies (LEAs) and public schools in their States. Accordingly, we are revising §200.85(b)(1) to clarify how an SEA would meet its responsibility, with respect to MEP-eligible children who attend private schools or home schools, to secure the MDEs related to school records from LEAs and other LOAs that enroll MEP-eligible children.

We did not intend to suggest that an SEA could or should require a private school or home school to provide these records for uploading into MSIX. We presume that a private school generally would voluntarily provide these records to the SEA, LOA, or the parent (or emancipated youth) if it has received a specific request from a parent or emancipated youth to do so. Parents run the home school, so comparable considerations do not apply to it. We also stress that it has been the Department's long-standing interpretation of the MEP program statute (sections 1301 through 1309 of the ESEA) to permit parents

to decline to have their children participate in the MEP. If they decline, the SEA would not have responsibility for submitting MDEs for them into MSIX.

However, if a parent agrees to have his or her child participate in the MEP, an SEA has a responsibility under §200.89(c) to collect and document the information that supports a child's MEP-eligibility on the COE, and the final regulations clarify each SEA's responsibility to collect, maintain, and upload to MSIX all MDEs applicable to the child's age and grade level.

Accordingly, for migratory students in private schools, §200.85(b)(1) requires the SEA to do two things. First, the SEA must advise the parent of a migratory child, or the migratory child if the child is emancipated, of the necessity of requesting the child's records from the private school. And second, the SEA must facilitate the parent or emancipated child's efforts to request that the private school provide all necessary information from the child's school records either to the SEA or an LOA for uploading into MSIX, or to the parent or emancipated youth directly for provision to the SEA or LOA for this purpose. After this is done, the SEA or LOA must follow up with the parent, emancipated youth, or private school, as appropriate, to see that the requested records are made

available. Doing so will help to ensure that the SEA fulfills its responsibilities with regard to record collection and transfer to MSIX for all MEP-eligible children regardless of the child's place of enrollment, and help ensure that educational and health information for the child will be available promptly upon initial or subsequent school enrollments. We believe this approach is the most reasonable one for having SEAs obtain the necessary educational and health information for migratory children who attend, or attended, private schools and home schools given the differing authority SEAs have over private schools and home schools, as opposed to LEAs and public schools in their States.

If a parent does not want his or her child to participate in the MEP for any reason, neither the school nor the parent (or emancipated youth) must provide the child's information to the SEA, and the SEA has no further responsibility to seek the child's records. Thus MSIX and our regulations do not infringe upon the privacy of any child by compelling this information from private or home schooled students and do not set a precedent for requesting information from those who are not obligated to provide it.

Furthermore, we do not agree with the commenter's recommendation that the records of home schooled migratory

children should only be required to be submitted to MSIX if and when such children enroll in public school. One of the primary benefits of MSIX and the Consolidated Student Record for a migratory child is that the record contains a migratory child's educational and health history, which MSIX authorized users utilize to make appropriate decisions about a child's school enrollment, grade and course placement, and credit accrual needs regardless of where in the Nation the migratory child may later seek to enroll. In addition, the Consolidated Student Record may be used to determine the MEP services that will best address a migratory child's needs. Consistent with the purpose of section 1308 of the ESEA, MSIX makes these records available for all MEP-eligible children, regardless of the type of school they attend, have attended in the past, or may attend in the future.

Changes: We have revised §200.85(b)(1). We have clarified in the general MSIX data submission requirements that SEAs must collect and submit to MSIX the applicable MDEs for all eligible migratory children, regardless of the type of school in which the child is enrolled (e.g., public, private, or home school), or whether a child is enrolled in any school. In addition, we have clarified that the SEA meets its responsibilities for collecting MDEs from private

schools that migratory children attend or have attended by working with the parent or emancipated youth to provide a written request to the private school that the school either provide these records directly to the parent or emancipated youth or to an LOA or the SEA, for uploading to MSIX. The SEA or its LOA also would have responsibilities for following up with the parent, emancipated child, or private school, as appropriate.

Similarly, we have clarified that the SEA meets its responsibilities for collecting MDEs from home schools that migratory children have attended by requesting this information from the parent or emancipated child, either directly or through an LOA.

Comments: A number of commenters expressed concerns about the cost and burden on home school parents and families and private schools associated with the inclusion in MSIX of data on home school students and private school students.

Discussion: As noted above, these regulations do not require private schools or parents of migratory children (or emancipated children themselves) to do anything involuntarily. We do not believe that §200.85(b)(1) establishes any significant burden on those who do choose to work to have the MDE information on their children from their private or home schools submitted to MSIX. The

minimal burden on private school officials who respond to records requests from parents and emancipated children is accounted for in the time and cost associated with collecting the necessary information for any migratory child--whether the burden is assumed by a public school official, a private school official, or an MEP staff member. Beyond this, we will work with SEAs on best practices for the most efficient and inexpensive ways of providing migratory children's MDEs to MSIX, so that private and home schools may benefit from those practices as well.

Changes: None.

Comments: A few commenters asserted that records transfer via MSIX for migratory students attending home school or private school is not necessary, because the need for records transfer is sufficiently addressed by home school and private school families. One commenter stated that the need is met by State and local laws; another stated that the need is met by parents and teachers; and another stated that the need should be met by parents.

Discussion: We do not agree with the commenters that the need for records transfer for all migratory children, including those migratory children attending home schools and private schools, will be sufficiently addressed in the

absence of these regulations. All migratory children, including those who attend private schools or home schools, may move to a new area at any time, and as a result may seek to enroll in a public school or an educational program in their new area. If this occurs, these migratory children should benefit from MSIX in the same way as any other migratory child. Although educational records for some migratory children may be transferred in accordance with State and local laws, or as a result of parental requests, the MSIX system will ensure that records are available for all migratory children in a timely manner.

Changes: None.

Other General Concerns Regarding Regulations

Comments: One commenter asked whether the regulations are a way for the Department to compel the one State that does not currently use MSIX to do so.

Discussion: The Department is issuing these regulations to implement the congressional mandate in section 1308(b) of the ESEA that the Secretary establish a system for linking the various State records systems to ensure that MDEs are available for all migratory children whenever they enroll in a new LEA or MEP-funded program. The Department is not singling out any State; indeed, while nearly all States are now voluntarily participating in MSIX, there is not

consistency in States' provision of all applicable MDEs for all migratory children, or how frequently States provide new or updated MDEs to MSIX. These regulations are intended to address these matters, so that whenever and wherever migratory children move, the staff of schools and programs in the new locations have ready access to basic information they need for purposes of timely school enrollment, grade and course placement, credit accrual, and provision of services.

Changes: None.

Comments: One commenter expressed concerns that the regulations focus on K-12 students, and are not designed for the OSY subpopulation of migratory children. The commenter noted that his/her State identifies more migratory OSY than migratory K-12 children, and described various barriers or extra burden associated with collecting the necessary data for migratory OSY. These barriers include the fact that (1) all OSY require separate input of MDEs; (2) OSY who are undocumented lack identification and other documentation; and (3) OSY performing work under an H2A visa stay for limited periods of time before moving again. In addition, the commenter stated that his or her State focuses on serving OSY's immediate needs for the limited period of time they remain in the State, and we

assume the commenter is concerned about the diversion of resources from these services to implement MSIX requirements.

Discussion: The Department appreciates the commenter's concerns, but does not agree that the regulations insufficiently address the OSY population. These regulations require data submissions for any migratory child whom the SEA considers eligible for the MEP, including OSY. MSIX is a vital resource for the MEP to help migratory OSY return to school, secure the academic course credits they need to obtain a high school equivalency degree, or obtain other educational and related services.

We interpret the commenter's concern regarding the necessity of inputting OSY information separately to mean that data for OSY is not readily available in the State's school-based data systems (for children enrolled in K-12 schools), and therefore cannot be as easily uploaded from such systems. While collecting and maintaining the necessary MDEs for these OSY migratory children might conceivably be more costly than collecting and maintaining them for other migratory children, this is not necessarily the case. Most of the required MDEs, such as name, date of birth, and qualifying arrival date, apply to all migratory

children, and would have been collected on the COE when the SEA determined the child's eligibility for the MEP, so an OSY's lack of identification documents should not impose a burden on SEAs solely based on the necessity of transmitting this data to MSIX. In fact, by completing the COE for OSY, the State has already obtained 20 MDEs that it will submit to MSIX using the same electronic interface with MSIX the State uses for any other migratory child. Some of the other 42 MDEs apply only after a child reaches a certain age or grade level. Moreover, the MDEs pertaining to course history only apply to secondary school records. If OSY have not attended secondary school in the United States, the SEA would not need to submit those MDEs for those OSY because such MDEs would not exist. For OSY who have attended secondary schools in the United States, obtaining MDEs from those secondary schools should be no more difficult or burdensome than it is for in-school migratory youth.

Finally, in response to the concern that OSY performing work under H2A visas stay in one location for a brief period of time, we reassert the importance of inputting MDEs for all eligible migratory children. The most mobile migratory children are especially likely to

benefit from the immediate access to records contained in MSIX.

Changes: None.

Minimum Data Elements (\$200.81)

Comments: Several commenters expressed concerns or provided suggestions regarding the MDEs collected in MSIX. One commenter recommended that the MDEs in MSIX be added to the Common Education Data Standards (CEDS) or be modified to adopt the data definitions in CEDS. The commenter cited the increasing use of CEDS by States (including for other Federal data collections and by vendors) and stated that compliance with the MSIX data collections is complicated by definitions that differ from other Federal data collections, citing course history data as an example.

Two commenters recommended additional MDEs. One commenter suggested that we add a migratory worker's Qualifying Activity as an MDE. One commenter recommended that we collect more specific information on migratory students who are English Language Learners (ELLs), specifically the services, assessments, and accommodations provided to ELL migratory students.

One commenter requested that all 72 MDEs be listed in one document. One commenter requested clarification on the Clock Hours, Grade-to-Date, and Course History MDEs. The

commenter specifically asked whether Clock Hours is intended to capture the number of hours the student attended a class (hours enrolled and present for instruction) or the number of hours the student was enrolled (regardless of actual attendance). Citing the variation in State procedures for collecting and reporting data received from LEAs at the end of the school year, the commenter also requested that we clarify the frequency with which SEAs must submit Course History MDEs.

One commenter cited burdens associated with the Designated Graduation School MDE and health-related MDEs. The commenter stated that this information is difficult, if not impossible, for smaller States to complete, given that a majority of their migratory population is present for only a few weeks during the summer. One commenter asked the Department to further consider the practicality of the requirement for States to report partial credit, because many States do not currently collect this information in their student record systems.

Discussion: We appreciate the commenters' suggestions, and will consider implementing some of them following issuance of these regulations. In addition to our responses to the commenters' specific questions and comments regarding MDEs in this discussion, we will also continue to provide

technical assistance and guidance following issuance of these regulations, in order to help MSIX users understand the specific requirements of the 72 MDEs. If, after consulting with States, the Department concludes that it is necessary to collect additional MDEs beyond the 72 MDEs associated with these regulations, the Department will, as part of Paperwork Reduction Act-required procedures, seek public comment on additional MDEs via publication of an Information Collection Notice (ICN) in the Federal Register.

In response to the comment about either adding MSIX MDEs to CEDS, or modifying MDEs to reflect the data definitions used in CEDS, we first clarify for readers what CEDS is. The CEDS project is a national collaborative effort to develop voluntary, common data standards for a key set of education data elements to streamline the exchange, comparison, and understanding of data within and across early learning through postsecondary and workforce (P-20W). To develop voluntary common standards and to support SEAs in improving data quality, the National Center for Education Statistics in 2009 established a technical working group, now called the CEDS Stakeholder Group, which includes representatives from across the P-20W field. CEDS is not a student records system or a data collection, and

adoption of the standards, in whole or in part, is voluntary. We note that, when we compared the MSIX MDEs and CEDS, 72 percent of the MDE and CEDS definitions were identical, very similar, or similar. We will explore the feasibility of aligning existing CEDS definitions with the remaining MDEs that are not currently aligned to CEDS and which are not unique to the migratory child population.

With regard to suggestions that we supplement the existing MDEs, we will consider discussing with migrant education stakeholders the desirability of adding to the existing MDEs such information as Qualifying Activity, and more detailed information regarding migratory children who are ELLs. We note that, as information about ELLs is currently collected, MSIX allows all SEAs to upload the MDEs related to student assessments to the system however the State collects and reports them. For example, if the State collects and reports that a student took the assessment in another language, that information will be uploaded to MSIX and appear in the child's MSIX Consolidated Student Record. While we will consider the commenters' suggestions, we remind readers that the Consolidated Student Record is not intended to capture all educational and health information for a migratory child, and will often refer users to records, such as immunization

records and Individualized Education Plans (IEPs), that exist outside of MSIX.

We also note that all 72 MDEs are contained in the "MSIX Minimum Data Elements" document that is housed on MSIX and, as such, available to all MSIX users.

With regard to the Clock Hours MDE, this MDE is intended to capture the number of hours that a student was enrolled in a course prior to withdrawal. As noted on the list of MDEs, the Clock Hours MDE is only applicable to courses that a student enrolled in, but has not completed, or for which no credit has been granted. With regard to the Designated Graduation School MDE, this MDE is only supplied by the State in which the student intends to graduate, which, in the great majority of cases, is not a State serving the student only during the summer months or other brief time period. Therefore, providing data for the Designated Graduation School MDE should not significantly affect small States which, as the commenter noted, have a majority of their migratory population present only during the summer. All MDEs related to course history, which include the Grade-to-Date and Clock Hours MDEs, are currently only applicable to secondary school-aged migratory children, and SEAs must update these MDEs in accordance with the timelines specified in the regulations.

For example, SEAs must collect and submit new and updated MDEs for migratory children within 30 calendar days of the end of an LEA's or LOA's fall, spring, summer, or intersession terms.

The only health-related MDEs at this time are Immunization Record Flag and Med Alert Indicator. Neither of the health-related MDEs requires SEAs to collect and submit to MSIX a migratory child's immunization records or detailed health information. Rather, each functions as an alert to authorized users that such records exist outside of MSIX. We believe both of these health-related MDEs are essential pieces of information that will facilitate a migratory child's enrollment in school and access to services that address a child's chronic or acute health issue and, accordingly, require all States, including small ones, to include them in MSIX. Finally, with regard to the recommendation that the Department further consider the practicality of requiring SEAs to collect and report partial credit rather than require use of this MDE at this time, we note that the main obstacles to graduation for secondary school-aged migratory children are credit accrual and placement in coursework linked to high school graduation. The migratory lifestyle poses barriers to migratory children's progression from one grade to the next

and accrual of credits toward graduation. Credit-granting alternatives, such as the consolidation of partial coursework, may increase the graduation rate of migratory children. We understand the commenter's concern that the collection of partial coursework is not normally done for the general student population, but this is a unique need for migratory secondary school-aged children due to their migratory lifestyle.

Changes: None.

MSIX State Records System and Data Exchange Requirements as a Condition of Receiving MEP Grant Funds (§200.85(a))

Comments: Several commenters expressed concern about the consequences for States that do not comply with these regulations, including the timelines for data submissions. One commenter asked what specific actions the Department would take against SEAs that do not comply with the timeframes that the regulations require. One commenter emphasized the importance of realistic timelines in light of the financial sanctions associated with non-compliance. Another commenter stated that because non-compliance results in a loss of funding, the Department must ensure that the regulations adhere to the standard of reasonableness under the APA. Commenters cited the burdens of the regulations for States with smaller MEP allocations

in particular, and cautioned the Department that imposing financial penalties for non-compliance could compound States' frustration or deter States from participating in the MEP.

Discussion: We understand commenters' concerns about the possibility that a State that fails to comply with these regulations would face a loss of MEP funding. However, the full implementation of MSIX is a statutory requirement for all SEAs, and therefore we must condition an SEA's receipt of funds on compliance with these regulations.

But while loss of funding is a potential option wherever a grantee fails to comply with basic program requirements, our goal is to work with all SEAs so that there will be no need for the Department to take this kind of action. We want all SEAs to continue to provide migratory children with the services they need to achieve academically; and to facilitate such academic achievement by having timely access to complete records for purposes of school enrollment, grade and course placement, credit accrual, and participation in the MEP. At the same time, we understand that some States will face implementation challenges, and intend to work with them to resolve how they may be addressed before we would consider establishing special grant conditions or other actions authorized by 2

CFR 200.338. We developed these regulations with an understanding that they must adhere to standards of reasonableness under the APA, and believe that they do adhere to those standards and are realistic.

Changes: None.

MSIX State Records System and Data Exchange Requirements--

Effect on Services (§200.85(a))

Comments: A number of commenters expressed concerns that the amount of funds and staff time required to comply with the regulations would negatively impact the amount of funds and time staff have available to serve and recruit migratory students. One commenter asked the Department to allocate funds to States specifically for the purposes of fulfilling these regulatory requirements, in order to alleviate the burden on small-allocation States in particular.

Discussion: We appreciate the commenters' concerns, but do not agree that further changes are necessary at this time. Separate from these regulations, every State has a responsibility to promote interstate and intrastate coordination of services for migratory children, including providing for educational continuity through the timely transfer of pertinent school records. All SEAs that currently receive MEP funds submitted consolidated State

applications, as allowed under section 9302 of the ESEA. Under section 9304(a), each consolidated State application includes a single set of assurances, applicable to each program for which the application was submitted, that provides that each such program will be administered in accordance with all applicable statutes, regulations, program plans, and applications, a provision that mirrors the applicable regulatory requirement in 34 CFR 76.700. The ESEA-specific program assurances section of the consolidated State application requires that each SEA that submits a consolidated application also provide an assurance that it will comply with all requirements of the ESEA programs included in the consolidated application. Thus, whether or not a State submitted a consolidated State application, section 1304(b)(3) of the ESEA would require the SEA to ensure that the State provides for educational continuity through the timely transfer of pertinent school records. This provision must be read in the context of section 1308(b), which creates a separate responsibility for all SEAs receiving MEP funds to implement reasonable regulatory requirements designed to make electronic data transfer work for all migratory students, regardless of the State in which they reside and enroll in school and MEP

programs. We strongly believe that these regulations fulfill this requirement.

As explained in the Regulatory Impact Analysis section of this document, we do not believe these regulations create unreasonable costs or burdens on States. For example, these regulations piggyback on States' own systems for maintaining appropriate records for migratory children. Nearly all States already participate voluntarily in MSIX and, to varying degrees, submit the MDEs into MSIX for the migratory children they identify as MEP eligible. Moreover, under these regulations, MDEs needed for MSIX may continue to be collected through existing State student-record systems.

For those States that are not currently utilizing MSIX in the manner and within the timelines required by these regulations, we understand that some adjustments to current practices and procedures will be necessary, and that some States may incur greater costs and burden. In response to the commenter who asked the Department to allocate funds to States specifically for the purposes of fulfilling these regulatory requirements, following consultation with MEP grantees, we will consider the feasibility of providing funds or other resources to do so. Further, as we acknowledged in the NPRM, States may use MEP funds to cover

the costs associated with implementing the regulations, albeit with the result that less MEP funding would then be available for direct services.

We believe that, when fully implemented, MSIX will create efficiencies in the provision of services to migratory children by making their records available promptly for purposes of school enrollment, grade and course placement, and credit accrual. Having access to such records will allow MEP staff to better serve students by utilizing their academic history and other information to target services to meet their individual needs. Also, the consistent State use of the MSIX email notification system and various MSIX reports, along with the availability of timely and accurate data in MSIX, will make identification and recruitment efforts more efficient.

We believe that the requirements contained in these regulations represent a careful balance between placing burden on States and other agencies providing services to migratory children, and meeting the need for collecting and maintaining updated accurate information about this mobile population in order to ensure timely transfer of pertinent school records when migratory children move from one school district to another.

Changes: None.

MSIX Data Submission Requirements--General Timelines

(\$200.85(b)(1))

Comments: Six commenters stated that the timelines required by the regulations are unrealistic, burdensome, or unreasonable. One commenter stated that regulatory deadlines that conflict with State deadlines would result in the State's non-compliance with regulatory requirements.

Discussion: We acknowledge the commenters' concerns regarding the timelines required by the regulations, but the commenters did not provide us with sufficient information to consider the merit of their concerns or what alternatives they might recommend. We have responded to comments regarding the burden of these regulations as a whole, in the Regulatory Impact: Costs and Burden Associated with the Regulations section. We respond to comments regarding specific timelines required by these regulations, in the following sections: Start-up Data Submissions (\$200.85(b)(2)); Subsequent Data Submissions--Migratory Children for Whom an SEA has Approved a New Certificate of Eligibility (\$200.85(b)(3)(i)); Subsequent Data Submissions--End of Term Submissions (\$200.85(b)(3)(ii)); and Subsequent Data Submissions--Change of Residence Submissions (\$200.85(b)(3)(iii)).

Changes: None.

Start-up Data Submissions (§200.85(b)(2))

Comments: Several commenters expressed concerns about the staffing burden associated with start-up submission requirements: entering data for children considered eligible in the previous year; entering course history and assessment data for children considered eligible in the previous year; verifying data in the State system and MSIX; and making any necessary changes to current staff responsibilities and provision of additional training. One commenter requested that the Department allocate additional funding to small States for the direct communication of State student data systems and MSIX to alleviate the burden on those States of entering the course history and assessment data of every migratory student in the State's system in the year preceding the effective date of these regulations. Several commenters stated that a longer implementation period is needed.

Discussion: We appreciate the commenters' concerns about the burden associated with start-up submissions. Having considered the matter further, we agree that it would be unnecessarily burdensome to require States to collect and submit to MSIX within 90 days of the effective date of the regulations all applicable MDEs for every migratory child the State considered eligible for MEP services within one

year preceding the effective date of the final regulations. Accordingly, we have reduced the burden by requiring States to collect and submit to MSIX within 90 days of the effective date of these regulations all applicable MDEs only for every migratory child who is eligible to receive MEP services in the State on the effective date of these regulations, other than through continuation of services provided under section 1304(e) of the ESEA, as opposed to every migratory child the State considered eligible for MEP services within the previous year. By ensuring that the start-up submissions focus only on children whom States consider to be eligible to receive MEP services in the State on the effective date of the regulations, other than through continuation of services, §200.85(b)(2) reduces the number of children for whom States must collect and submit applicable MDEs, and consequently reduces the burden on States. Moreover, we believe that if an SEA has good reason to believe a migratory child is no longer residing in the State or no longer meets the MEP eligibility criteria (e.g., the child is over age 21, is no longer entitled to a free public education through grade 12), and thus is not eligible to receive MEP services in the State on the effective date of these regulations, that State should not be responsible for start-up submissions. Thus,

a State does not need to go back a year to provide start-up submission, and it also does not need to provide start-up submissions for a migratory child for whom it has information--either through MSIX or other means--that the child is no longer eligible for the MEP or is residing out of State on the effective date of the regulations.

We acknowledge that these start-up submissions may require States to provide extra training and/or adjust staff responsibilities in order to collect and submit the necessary data, but start-up data submissions are a one-time effort. Because the Department has reduced the burden for States by narrowing the population of migratory children for whom start-up submissions must be made, we maintain the requirement that States collect and submit this start-up data within 90 days of the effective date of these regulations. We also will consider, upon consultation with States, the feasibility of providing additional funding and resources to States to assist them in meeting the responsibilities entailed by these new regulatory requirements.

Changes: We have revised the requirements for start-up submissions in §200.85(b)(2), to require SEAs to collect and submit to MSIX the applicable MDEs for migratory children eligible to receive MEP services in the State on

the effective date of the regulations, other than through continuation of services provided under section 1304(e) of the ESEA.

Because of this change to the start-up submissions requirement, proposed §200.85(b)(2)(ii) is no longer applicable. This subsection included a requirement for SEAs to make start-up submissions to MSIX for a migratory child whether or not the SEA has a current COE for the child at the time the SEA submits the start-up data. Under the revised requirement, an SEA will only be required to make start-up submissions for migratory children the SEA considers eligible for MEP services on the effective date of the regulations (i.e., the child has a current, State-approved COE, is age 21 or younger, is entitled to a free public education through grade 12, and is considered still a resident of the State, and so eligible for MEP services), other than on the basis of continuation of services under section 1304(e) of the ESEA. Accordingly, proposed §200.85(b)(2)(ii) has been removed entirely.

Subsequent Data Submissions-- Migratory Children for Whom an SEA has Approved a New Certificate of Eligibility
(§200.85(b)(3)(i))

Comments: Based on the wording used in the NPRM for the proposed requirement ("newly documented migratory

children”), one commenter questioned the meaning of the term, and whether the 10-day timeframe for collecting and submitting to MSIX the MDEs for such a migratory child begins with the date the COE is completed, entered in MSIX, or signed by the recruiter. The commenter also cited potential delays with such a timeline due to the processes associated with COE quality control, such as COE approval and COE data entry in State systems.

One commenter stated that MEP staff currently make every effort to ensure timely data submissions, and that the timeframes required by §200.85(b)(3)(i) are unrealistic and will sacrifice data quality for the sake of rapid data entry. One commenter stated that the 10-day timeframe is unrealistic for a small State, as approximately 55 percent of COEs are collected within a three-week timeframe.

Several commenters stated that the 10-day timeframe required under §200.85(b)(3)(i)(B)(1) (for collection and submission to MSIX MDEs from the most recent secondary school in that State attended previously by a newly documented secondary school-aged migratory child) is unreasonable and unnecessary. Commenters cited the following barriers to obtaining the necessary secondary school records within 10 working days: some MEP summer projects are not affiliated with school districts and do

not have direct access to the State data system to obtain the necessary school records; the SEA does not have immediate access to the necessary records at the State level; the SEA relies on LEA staff, who may not be familiar with the MEP, may have competing work priorities, or may be unavailable during summer months; assessment data and other school records are uploaded to the State database on a timeline that does not align with the 10-day requirement contained in the regulations; and lack of staff.

Several commenters provided descriptions of existing State processes for obtaining academic records, as support for why §200.85(b)(3)(i)(B)(1) is unnecessary. The commenters stated that LEAs obtain necessary course history information from the State's own database, and would not rely on, or accept as an authoritative source of information, MSIX records containing secondary course information, for purposes of course placement or credit accrual.

Discussion: In response to the commenter who requested that we clarify both the term "newly documented migratory children" and thereby when the 10-working day requirement begins, we note that: §200.85(b)(3)(i)(A) states that it begins with the documentation of child's eligibility; and §200.89(c)(1) provides that the State must use a COE to

document eligibility. Therefore, the 10-day period begins with the date the SEA-designated reviewer approves the child's COE. Accordingly, an SEA's quality control processes and procedures associated with reviewing and approving COEs before the SEA-designated reviewer approves the COE does not impact when the 10-day period begins. In addition, given both the confusion expressed in those comments about the meaning of the term "newly documented", and the fact that the Department has not to date used the term "newly documented" to describe migratory children, we have substituted the term used in the NPRM with what we believe is a clearer and synonymous phrase: "migratory children for whom an SEA has approved a new Certificate of Eligibility."

We disagree with the commenters who stated that the 10-working day requirement for subsequent data submissions for migratory children for whom an SEA has approved a new COE is unrealistic or not feasible. As detailed in the Department's 2004 Report to Congress on the "Maintenance and Transfer of Health and Educational Information for Migrant Students by States," the Department engaged in many State consultations in which it received advice on the MDEs and associated timelines. A consensus was reached during the Department's MSIX consultations with SEAs and

stakeholders that an SEA could be expected to submit a migratory child's MDEs to MSIX within 10 working days of the date that the SEA documents under §200.89(c)(1) that the child is eligible for the program. We acknowledge that this requirement and others contained in these regulations may require SEAs to implement changes, such as modifying existing staff responsibilities, providing additional training, or coordinating with non-MEP LEA and/or SEA staff, to ensure the necessary student data can be collected and submitted to MSIX in adherence to the regulatory timelines.

As stated in the paragraph above, the 10-working day requirement starts with the date that the SEA-designated reviewer has approved the child's COE. There is no regulatory requirement for the SEA to identify and recruit a migratory child within a maximum number of days after the child has made a qualifying move; nor is there a regulatory requirement for the SEA to complete the COE approval process within a maximum number of days after the child has been identified and recruited. While we strongly encourage all SEAs to complete these processes and procedures in a timely manner so that migratory children may begin receiving services as quickly as possible, MEP requirements do not dictate when the SEA must complete them or how soon

the SEA must begin providing services after the child makes a qualifying move. Still, because migratory children may seek enrollment in school or in an MEP program at any time, we believe it is of critical importance that SEAs collect and submit the applicable MDEs to MSIX for each migratory child for whom an SEA has approved a new COE within no more than 10 working days after the SEA has approved the COE, in order to meet the system's purposes of timely school enrollment, grade and course placement, credit accrual, and participation in the MEP.

We also believe it is reasonable to expect that, for non-secondary school-aged children, a majority of the MDEs applicable to the child's age and grade level will already be available to the SEA; these MDEs would have been collected and recorded on the child's COE. We emphasize that for non-secondary school-aged children, the regulations do not require SEAs to collect and submit MDEs in existence prior to the date that the SEA documents the child's eligibility (i.e., the date that the SEA approved the child's current COE). Collecting and submitting them might well be desirable, but these actions are not covered by the regulations.

For secondary school-aged migratory children, we believe it is necessary for SEAs to collect and submit to

MSIX within 10 working days all applicable MDEs from the most recent secondary school in the State previously attended by the child. If the LEA has not already entered the necessary information in the State's database, the SEA will need to collect the necessary information from the school's or LEA's records, and submit it to MSIX within 10 working days of approving a new COE for the migratory child. We understand the commenter's concern that MEP summer projects (LOAs) may not be affiliated with school districts and therefore would not have direct access to the State data system to obtain the necessary school records. However, these regulations apply to the SEA as the Department's grantee; therefore, it is the responsibility of the SEA to ensure that the applicable MDEs for each eligible migratory child are uploaded to MSIX within 10 working days. Meeting this responsibility may entail SEAs amending their current database access policies or procedures to allow MEP summer projects that are not affiliated with a school district to access the State's student database, or ensuring that non-MEP funded LEAs will be available in the summer months to provide the necessary data. The Department plans to issue non-regulatory guidance to assist States in determining the applicable

MDEs for secondary school-aged migratory children that must be collected and submitted under this requirement.

We do not agree with the commenters who stated that proposed §200.85(b)(3)(i)(B)(1) is unnecessary, given existing State processes for obtaining academic records. We understand that LEAs likely will not rely on a child's MSIX record as the sole source of information for course placement and credit accrual. However, we do not believe this negates the need for SEAs to collect and submit the applicable MDEs to MSIX within 10 working days of approving a new COE for a secondary school-aged migratory child. Rather, we believe it is essential to have available, within 10 working days of approving a new COE for a migratory child, the minimum data necessary to enroll the child in school and place him or her in the appropriate classes.

Changes: Section 200.85(b)(3)(i) has been amended to replace the term "newly documented migratory children" with the phrase "migratory children for whom an SEA has approved a new Certificate of Eligibility".

Comments: Several commenters expressed concerns with §200.85(b)(3)(i)(B)(2), which requires SEAs to notify MSIX within 30 calendar days of documenting a newly eligible secondary school-aged migratory child if one of its LOAs

has obtained records from a secondary school in another State attended previously by the newly documented migratory child. The commenters stated that 30 calendar days is not sufficient time for a small State with minimal staff; the information is difficult or impossible to obtain; there is extra burden imposed on LOAs by the collection of this information; and more time is required to implement the new MDE associated with the proposed requirement (MDE 72, Out-of-State Records Flag), including to acclimate staff. One commenter observed that the new MDE had not been the subject of consultation with the SUGAR group (of which the commenter is a member).

Several commenters asked clarifying questions regarding the new MDE: whether the notification to MSIX must be made by the State or by the district; clarification on the term "notify" and how such notification would impact procedures for transmitting data to MSIX; whether the MDE would consist of a simple check box to indicate that records from a previously attended school had been received; whether information regarding the enrollment record and school must be included; and how the MDE would benefit most secondary students, as subsequent schools may still have to call the original school to request records. One commenter also asked how the Department expects SEAs to

monitor and enforce LOA compliance with the requirement to indicate in MSIX whether the LOA has obtained out-of-State secondary school records for a newly documented migratory child.

Discussion: In response to commenters' concerns about §200.85(b)(3)(i)(B)(2), we clarify that these regulations do not require SEAs to seek or obtain the out-of-State records from a secondary school attended previously by the secondary school-aged migratory child for whom an SEA has approved a new COE. If the SEA (or one of its LOAs) does choose to seek and obtain such out-of-State records for a secondary school-aged migratory child for whom the SEA has approved a new COE, the regulations require the SEA to notify MSIX that one of its LOAs has obtained such records within 30 calendar days of receipt of such records; but the regulations do not require the SEA or its LOAs to submit to MSIX the MDEs associated with those out-of-State secondary school records. The timeline of 30 calendar days is based on the Department's survey of eight State officials, in which we asked how many minutes it would take to research whether an out-of-State transcript is present and then indicate in the State's system whether the information is present. Because the regulations do not require SEAs or LOAs to upload the out-of-State records to MSIX, but simply

indicate whether an LOA has the records, we believe 30 calendar days is a reasonable timeline.

The new MDE associated with this requirement is a flag that notifies an authorized user of MSIX viewing the child's record that one of a State's LOAs has obtained out-of-State secondary school records for the migratory child for whom an SEA has approved a new COE. When the MDE is fully functional, this will enable another authorized user to go directly to that LOA for the records rather than initiate a second contact with the out-of-State secondary school previously attended by the child. This notification in MSIX may be initiated by LOA or SEA staff, depending on how the SEA chooses to delegate this responsibility. We expect SEAs to monitor compliance with this requirement to the same extent that they are expected to monitor all other MEP programmatic requirements, and we will provide technical assistance and guidance to all SEAs in implementing this new MDE.

Finally, in response to the commenter who noted that this new MDE was not the subject of consultation with the SUGAR group, we note that while the Department values the input of this particular group, we are not required to consult with one specific group of individuals on all MSIX-related matters, including specific MDEs. The NPRM's

invitation for public comment is a form of consultation, inviting feedback on all aspects of these regulations, including the new MDE, from all interested parties. We further note that the burden estimates associated with this MDE are based on information provided by the eight States that responded in March 2012 to the Department's survey of State officials. We believe the estimates are reasonable, and do not believe MDE 72 adds a significant additional burden to the overall burden associated with the currently approved MDEs and these regulations. A more detailed discussion of the costs and benefits of these regulations is included in the Regulatory Impact Analysis section.

Changes: None.

Subsequent Data Submissions--End of Term Submissions

(§200.85(b)(3)(ii))

Comments: None.

Discussion: Based on its review of other public comments, the Department reevaluated proposed §200.85(b)(3)(ii)(B), which addresses the submission of MDEs at the end of each term for migratory children whose eligibility for the MEP expires during the school year. We have determined that the proposed requirement for SEAs to submit MDE updates and newly available MDEs for any child who continues to receive MEP services under section 1304(e) of the ESEA

(Continuation of Services) after expiration of MEP eligibility, would place an unnecessary burden on SEAs to collect and submit this information to MSIX.

Depending on how an SEA chooses to implement the discretionary authority in section 1304(e), some formerly eligible migratory children may continue to receive services for one additional school year after expiration of MEP eligibility, and may continue to receive credit accrual services from the MEP through graduation. We did not intend for SEAs to be required, as part of their end of term submissions, to collect and submit data for all formerly eligible migratory children who continue to receive MEP services, beyond the end of the school year in which their MEP eligibility expired. Therefore, we have removed from §200.85(b)(3)(ii)(B) the proposed requirement that SEAs submit MDE updates and newly available MDEs for all children who continue to receive MEP services under section 1304(e) of the ESEA. We continue to believe that migratory children whose eligibility expires during the school year are best served by having an MSIX Consolidated Student Record that contains the child's educational and health information through the end of the school year. SEAs will be required to collect and submit MDEs through the end of the school year in which the migratory child's

eligibility expired, but whether the child continues to receive MEP services under section 1304(e) is not relevant under this requirement.

Changes: We have revised §200.85(b)(3)(ii)(B) to remove the requirement for SEAs to submit all MDE updates and newly available MDEs for any child who continues to receive MEP services under section 1304(e) of the ESEA after expiration of MEP eligibility.

Comments: Several commenters stated that SEAs might not be able to submit end of term data within 30 calendar days from the end of each term (fall, spring, summer, and intersession terms). They cited barriers such as: lack of personnel; LEA staff not being present to supply the necessary data during school breaks, or being busy with processing student enrollment and withdrawals from their facilities; and SEAs' inability to access student data from State student databases, due to lack of direct access for MEP staff at the LOA or State level or existing State-mandated timelines for LEAs to submit data to the State system, and State data validation processes.

Several commenters also stated that assessment data would be particularly difficult for SEAs to collect and submit to MSIX within 30 calendar days of the end of each term. Commenters noted that the data might not be

available even to LEAs within 30 days of the end of the term because the data is reported and uploaded during the summer months. Also, many LEAs aggregate testing and other data on a variety of timelines, some set by State requirements, others by local school district policies and procedures. One commenter stated that assessment data are not available in the State data system until a year or more after the test is administered.

Discussion: We understand that in some locations this requirement may require changes to long-standing practices and procedures. For example, it may require some SEAs to modify existing staff responsibilities and better coordinate with non-MEP LEA and SEA staff to ensure the necessary student data can be collected and submitted to MSIX in adherence with the regulatory timelines. However, we do not believe those challenges warrant an extension of the 30-calendar day period because any further extension could have a detrimental impact on the ability of local school and MEP staff to have timely access to necessary educational and health records of migratory children. For example, because the summer term is an opportunity to make up for educational interruptions that occur due to the migratory lifestyle, it is imperative that MEP and other staff have access to a migratory child's educational and

health information, including assessment data, as soon as possible after the end of the regular school year so that they can determine the summer services that will best address the child's needs.

The regulations do not require that all LEAs upload student data more frequently to the State's student database. LOAs that are not LEAs, or LOAs that do not otherwise have direct access to the necessary data, may collect the necessary data directly from LEAs, and submit the data to MSIX through another records system (such as a State migrant-specific database), if such a process would be more efficient or practicable for an SEA to meet the regulatory requirement. We will provide technical assistance to SEAs and share strategies that have worked in some States that have overcome similar barriers to providing migratory student data to MSIX.

In response to the commenters who expressed particular concern that LEAs would not have student assessment data within 30 calendar days of the end of the term, we intend updated and "newly available" MDEs to mean that the information has been processed by an LEA, LOA, or other responsible party, such as a contractor for the SEA, and could be collected by an SEA (or, as applicable, one of its LOAs). We cannot reasonably expect the SEA to collect and

submit MDEs for data that are still being processed, or that are not otherwise accessible to an LEA. We note that under separate, existing requirements for title I, part A, SEAs must ensure that the results of State academic assessments are available to LEAs before the beginning of the next school year (see section 1116(a)(2) of the ESEA, as amended by NCLB).

Changes: None.

Subsequent Data Submissions--Change of Residence
Submissions (§200.85(b)(3)(iii))

Comments: Some commenters interpreted §200.85(b)(3)(iii) to require submission of MDEs for a migratory child four days after the COE completion date or after the child becomes eligible for MEP services. One commenter asked whether the notification referenced in the regulations is the same as the move notification in MSIX currently utilized by some MSIX users to alert another school district or State to which the child has moved or will move, and one commenter described challenges posed by that MSIX notification system due to insufficient information provided to the district or State to which the child has moved or will be moving. One commenter interpreted the change of residence notification to require an SEA, within

four working days to: locate the child, complete a COE, approve the COE, and submit the applicable MDEs to MSIX.

Several commenters cited as challenges to compliance with the four-working-day requirement a lack of staff capacity and difficulty in obtaining the necessary data from school districts--either because LEAs are not staffed in the summer months, or because of the time required for school personnel to collect and deliver the necessary information to the regional offices to enter in the State database and upload to MSIX. Two commenters asked the Department to consider extending the four-working-day requirement to 10 days, 15 days, or 14-21 days (14-21 days would align with the current recommended timelines for SEAs to resolve items on their MSIX work lists).

Discussion: We appreciate the commenters' concerns, but do not agree that they warrant a change to the regulatory requirement. In response to the commenters' questions and requests for clarification, we clarify here the differences in data submission requirements under §200.85(b)(3)(i) for migratory children for whom an SEA has approved a new COE, and the data submission requirements under §200.85(b)(3)(iii) for migratory children who were previously documented as eligible and have changed residence.

Under §200.85(b)(3)(i), if an SEA documents a child as newly eligible for the MEP (i.e., the SEA approves a new COE for a child based on a qualifying move, regardless of whether the SEA has previously approved a COE for the same child based on a previous qualifying move), the SEA has 10 working days from the date the SEA-designated reviewer approves the child's COE to submit all applicable MDEs for the migratory child for whom an SEA has approved a new COE. For children whom an SEA previously documented as eligible for the MEP, and for whom the SEA has previously submitted data to MSIX, §200.85(b)(3)(iii) requires an SEA to submit to MSIX any MDE updates or newly available MDEs for the migratory child within four working days, only if the SEA has received notification from MSIX that the child has changed residence to another LOA within the same State or another SEA has approved a new COE for the child. For example, if a child moves from State A to State B, an MSIX user in State B may initiate a move notification in MSIX, to request the child's educational and health information from State A. Within four working days of receiving such a notification in MSIX, State A must upload to MSIX any updated or newly available MDEs for the child since State A's last submission of MDEs for the child. These regulations do not require State B to initiate the move

notification in MSIX. The regulations retain the current flexibility for MSIX authorized users to send a move notification through MSIX to the child's former location, upon determining that the child's record is missing data.

When an SEA receives this type of change-of-residence notification from MSIX, the SEA should understand that the notification is an indication that the child has already left the district or State, not that the child is coming. So, under this regulatory requirement, upon receiving notification that the child has changed residence, the SEA does not need to locate the child in order to collect needed information. Rather, that SEA must submit to MSIX any updates or newly available MDEs that have become available to the SEA or one of its LOAs since the SEA's last submission to MSIX for that child. Under §200.85(b)(iii)(B), if there is no new or updated MDE information to submit at the time that the SEA receives the change of residence notification, the SEA must enter any new or updated information within four working days of when the data does become available to the SEA or one of its LOAs. Consistent with the discussion in the Subsequent Data Submissions--End of Term Submissions (§200.85(b)(3)(ii)) section, we intend "newly available" MDEs to mean that the information has been processed by an

LEA, LOA, or other responsible party, such as a contractor for the SEA, and could be collected by an SEA (or one of its LOAs, should the SEA designate this responsibility to its LOAs).

Some commenters referenced a different type of MSIX notification that many MSIX users currently use on a voluntary, as-needed basis. This is a notification to alert a receiving school district that a migratory child has recently moved to the school district, or will be arriving soon. While we encourage use of this notification, at this time there is no regulatory requirement for SEAs to initiate such advance notifications, nor is there a required timeframe in which SEAs that receive such notifications must locate a child in the new school district to which the child has moved.

We understand that to meet these requirements, some SEAs may need to modify staff responsibilities, processes, and procedures to obtain and submit the necessary data within the required timeline. While we recognize that four working days is a very short timeframe, MEP and school personnel in the migratory child's new State or school district need critical information on the child as soon as possible so that they can make appropriate decisions regarding school enrollment, grade and course placement,

accrual of secondary credits, and participation in MEP services. The requirement to obtain and submit data within four working days was informed by the estimates of time needed for data collection, as provided by the group of eight States that responded to the Department's survey of State officials. It is essential to keep the short timeframe because there is no way to know how many days have lapsed between the child's arrival in the new school district and the district's initiation of the change of residence notification in MSIX.

Changes: None.

Use of Consolidated Student Records (§200.85(c))

Comments: One commenter asked the Department to specify in the final rule that the Consolidated Student Record (referred to in the NPRM as Consolidated Migrant Student Record) may be used for grade and course placement purposes in conjunction with other local enrollment document review procedures and new student assessment procedures.

One commenter asked the Department to include language in the final regulations that State MEP Directors are to encourage teachers and guidance counselors to use MSIX. The commenter stated that MSIX is not well known by those outside the field of migrant education, including teachers and guidance counselors, and emphasized the importance of

these school personnel knowing the benefits of MSIX and being able to use the system, or knowing whom to contact to obtain the necessary information contained in MSIX.

One commenter requested that the Department provide specific expectations for SEAs about how they should monitor compliance with the requirements in §200.85(c) for use of Consolidated Student Records. One commenter recommended that the Department conduct a periodic evaluation of State manuals, training procedures, and SEA implementation of the requirements under §200.85(c).

Two commenters expressed concerns about the burden associated with providing MSIX training to school staff, including issuing and updating passwords. One commenter asked the Department to use “unallocated” State funds to establish procedures, develop and disseminate guidance, and provide training in the use of MSIX, to alleviate the burden of these requirements for small States.

Discussion: We appreciate the commenters’ concerns, and agree with them in part. We recognize the value of one commenter’s approach to grade and course placement for migratory students, which relies on multiple information sources. We fully encourage MSIX users to use a child’s Consolidated Student Record in conjunction with other data sources. The Consolidated Student Record is intended to be

a starting point for school enrollment, grade and course placement, credit accrual, and participation in the MEP; it is not intended to be relied upon as the sole source of data for a migratory child. For example, the Consolidated Student Record will not contain a migratory child's immunization record but, rather, will alert the MSIX user as to whether such a record exists. Thus, the Consolidated Student Record is intended as a starting point. As a result of these regulations, the information it contains will be available in a timely manner, and will direct users to where they may obtain other pertinent information in intra- and inter-State records.

We agree with the commenter on the value of informing teachers and counselors about, or giving them access to, MSIX. However, we do not agree that it is necessary to specifically require MEP State Directors (or SEAs) to encourage specific personnel as authorized users of MSIX. While we plan to encourage, in subsequent guidance, the use of MSIX by those most likely to utilize the system for its intended purposes, including school teachers and counselors, §200.85(c)(3) maintains the existing flexibility for SEAs to determine their States' MSIX authorized users. We have developed MSIX training materials specifically designed for MSIX authorized users,

and we encourage SEAs to utilize these materials. We will gladly assist SEAs that are interested in developing specific procedures, guidance, and training for their authorized users, including teachers and counselors.

In response to the commenter who asked the Department to provide specific expectations for SEAs regarding monitoring compliance with the regulatory provisions regarding use of the Consolidated Student Record, we do not believe it is appropriate or necessary to include such expectations in these regulations. However, we will provide technical assistance and guidance to assist SEAs with implementation of these regulations and share strategies that SEAs may use to monitor LOAs' compliance. In response to the commenter's recommendation that the Department conduct a periodic evaluation of State manuals, training procedures, and SEA implementation requirements under §200.85(c), the Department does not currently have plans to evaluate these specific requirements on a national level. We will, however, monitor compliance with these requirements on an as-needed basis, and as part of our standard monitoring procedures. The Department's MSIX contractors also assist with monitoring the implementation of some of the requirements contained in the regulations.

With regard to concerns expressed about the burden associated with MSIX training, we clarify that these regulations do not require all LEAs in the State to use MSIX, nor do these regulations require all LEA staff to be trained as authorized users. The regulations require the SEA and its LOAs to use the system, and require the SEA to encourage its LEAs that do not receive MEP funds (i.e., LEAs that do not meet the definition of an LOA) to use the system. We will provide technical assistance to SEAs to make MSIX training as efficient as possible and share strategies for how SEAs can encourage use of MSIX by LEAs that do not receive MEP funds. We also encourage SEAs to use the materials developed by the Department to minimize the burden on States, including: a template for a State manual to assist States in developing policies and procedures for using MSIX, ensuring data quality, and protecting the data; and online training and a training toolkit for State officials to use in carrying out training within their States. The use of the Department's materials is optional for States, and the templates are meant to be supplemented or adapted by SEAs to incorporate State-specific information.

Finally, we wish to clarify what we understand to be the commenter's reference to "unallocated" State funds:

there are no "unallocated" MEP funds. All MEP funds appropriated to the program by Congress are allocated to States or to coordination activities authorized under section 1308 of the ESEA. The Department allocates up to \$10 million from the total annual MEP appropriation for coordination activities, of which up to \$3 million is allocated for special consortium incentive grants (CIGs) to SEAs. If any of the section 1308 funds allocated for non-CIG coordination activities, such as for the MSIX contract, are unexpended after the end of the initial 15-month period of availability, these unexpended funds are re-allocated to SEAs. If such unexpended funds are re-allocated to SEAs in the form of a supplemental formula award, the SEAs may use the funds for any allowable MEP activity, including implementation of MSIX. As noted in response to other comments, the Department will consult with States to determine the feasibility of, in the future, re-allocating unexpended sections 1308 funds to SEAs in the form of MSIX data quality grants, which must be used for MSIX-related purposes as opposed to general MEP-related purposes.

Changes: None.

MSIX Data Quality (§200.85(d))

Comments: One commenter stated that larger States have greater numbers of data entry staff spread throughout the

State (e.g., a large State may have 20-30 data specialists working in various locations), and the accuracy of data varies among these locations.

Discussion: We understand that States with greater numbers of data entry staff face greater costs associated with training and measures to ensure consistent data quality for their student records systems. Because the authoritative source of MSIX data is each State's student records systems, the more accurate and complete the data is in such systems, the more accurate and complete the data will be in MSIX. We plan to prepare guidance and offer technical assistance that recommends reasonable and appropriate methods (e.g., running data quality reports in MSIX) that SEAs and their LOAs may use to ensure that all data submitted to MSIX are accurate and complete. While we understand the challenges and increased costs and burden associated with training more staff and monitoring greater amounts of data, we expect all SEAs to implement procedures that ensure that the data uploaded to MSIX are accurate and complete. Setting a lower standard would undermine the purpose of MSIX and negatively impact the intended beneficiaries of the system--migratory children.

Changes: None.

Procedures for MSIX Data Correction by Parents, Guardians,
and Migratory Children (§200.85(e))

Comments: Several commenters stated that the required timeframes for responses to data correction requests are inadequate or unreasonable, citing a lack of staff and difficulty communicating with migratory parents who commenters state are pre-literate, do not have access to electronic communication, or speak a language in which MEP staff are unable to fluently converse. One commenter asked the Department to advise SEAs on how to communicate the data correction process to such parents and guardians.

One commenter stated that an SEA might not be able to submit the revised data to MSIX within four working days of its decision to revise the data because some of the data transmitted to MSIX may come from other, non-migrant State data systems and must first be revised in those systems--creating a possible need for multiple data transfers. The commenter suggested that the Department revise the requirement to allow an SEA to submit the revised data to MSIX within 10 working days of the data being revised in the State's data system. One commenter stated that SEAs may have difficulty responding within 10 working days to data correction requests received from the Department if

such requests are received while districts are closed for holidays or school breaks.

One commenter cautioned about the burden imposed on the SEA by the requirements in §200.85(e), in terms of tracking and responding to data correction requests, depending on the volume of requests received.

One commenter asked about the process to be followed for data correction requests--specifically, the process for corroborating or validating the record correction request made by a parent, guardian, or migratory child. The commenter also asked whether there would be a process for districts or SEAs to appeal the request. One commenter recommended that the Department provide guidelines to help SEAs design procedures for migratory families to request a correction of MSIX data and that the Department review those State procedures.

Two commenters asked the Department to specify in the final regulations that: SEAs must have easily accessible and translated information for parents, guardians, and migratory children that informs them of the data correction process and how to submit a request, and specifies that a correction request can be made in a language other than English; and the SEA's response must be in an accessible and uniform format that the requestor can understand. One

commenter listed several existing Federal laws and policies that protect students and families from discrimination on the basis of national origin, and asked the Department to include specific requirements in the MSIX regulations to clarify that Federal civil rights laws preempt any State and local enactments to the contrary.

Discussion: We understand that the timeframes set forth under these regulations will require changes to current practices and procedures. SEAs are expected to make necessary adjustments to ensure that these requirements are met--for example, modifying staff responsibilities; identifying resources to overcome language or other communication barriers; and ensuring that staff are available to respond to data requests even when school is not in session. We also note that while SEAs and LOAs will need to address difficulties in communicating with parents, they already do so in other MEP contexts, including when conducting the initial interview with the family to determine a child's eligibility for the MEP.

In response to the comment about potential delays between the decision to correct MSIX data and the need first to correct data in other State data systems, as well as the possible need for multiple data transfers, we recognize that the regulations will require efforts on the

part of MEP and non-MEP staff at the SEA, LOA, and LEA levels to coordinate and possibly revise existing data correction procedures that apply to the State's student databases. We decline to expand the timeframe for submitting data corrections from these other systems, as commenters recommended, because the four-working-day timeframe is intended to expedite the period between an SEA's decision to revise data and the revised data being populated in the State's records systems (for subsequent upload to MSIX). Allowing an SEA to submit data to MSIX within 10 working days of the corrected data being entered in the State's records systems would, absent additional regulatory requirements, essentially allow SEAs an unlimited amount of time between making the decision to revise data and entering the revisions in their State data system, thus further delaying the transmission of the necessary data to MSIX. While we recognize the challenges SEAs may face in revising existing processes or procedures, including processes or procedures that are not solely within the control of SEA staff administering the MEP, we firmly believe that the requirements are necessary to ensure that migratory children's records are accurate, up-to-date, and available in a timely manner to school and project staff who need them.

In response to the comment about burdens associated with tracking data-correction requests, we note that the SEA has similar record-keeping responsibilities under other Federal and non-Federal programs (e.g., the record retention requirements contained in 2 CFR §200.333, part of the Uniform Administrative Requirements), and the SEA should already have an efficient record-keeping system that can be extended to this particular requirement. Based on responses to the Department survey of States mentioned previously, we estimated that on average each SEA will receive one data correction request annually. If an SEA receives a substantially larger number of data correction requests, this might indicate a problem with data quality controls.

Section 200.85(e) does not require SEAs to implement specific data-correction request procedures with respect to issues such as how requests must be made and how an SEA will decide whether to revise the data as requested. Thus, each SEA may determine the methods it will employ to receive such requests, how it will investigate requests, and whether and how appeals may be made. The regulations instead require SEAs to respond within specific timeframes (30 calendar days of receipt of the correction request), and require an SEA's written procedures to include minimum

action steps (e.g., send a written or electronic acknowledgement to parent/guardian/child requestor and investigate the request). We plan to provide technical assistance and guidance to assist SEAs in developing their written procedures, and our program monitoring will include monitoring of these regulatory requirements.

We agree with the commenters that information about data correction procedures must be communicated in a format and language that is accessible to parents, guardians, and migratory children, including those whose primary language is not English. We will consider providing technical assistance and guidance to SEAs that experience difficulties in communicating with parents. At the same time, we urge those with such concerns to utilize the SEA's existing procedures and resources, as the requirement to communicate with parents in accessible formats and in a language they understand is not a new requirement, but one that has applied to administration of the MEP for years. Section 1304(c)(3)(B) of the ESEA provides that each SEA desiring MEP funds must provide an assurance that "...all such programs and projects are carried out ... in a format and language understandable to the parents." Because these regulations would be part of the overall MEP requirements, we believe that State responses to MSIX data correction

requests would be one of the activities in carrying out MEP programs and projects, and therefore would need to be carried out in a format and language understandable to requesters (parents, guardians, and migratory children). As statutory requirements of the MEP, these Federal requirements, like any others, supersede any conflicting State or local laws.

Finally, we do not think it is necessary for the MSIX regulations to reiterate other applicable non-MEP Federal requirements. Those other requirements, including applicable Federal civil rights laws, already apply to the MEP and implementation of MSIX.

Changes: None.

MSIX Data Protection (§200.85(f))

Comments: One commenter expressed concerns with the requirements for protection of MSIX data. The commenter expressed concerns about the burden associated with the requirement in §200.85(f)(2) that SEAs establish and implement written procedures to protect records, and recommended that the Department write the necessary procedures. The commenter also expressed concerns about the requirement in §200.85(f)(4) that SEAs maintain documentation identifying MSIX users and the authorizing

supervisors, suggesting that MSIX be configured to maintain this documentation rather than impose this burden on SEAs.

Two commenters recommended adding to the types of authorized users permitted access by SEAs, which as proposed in the NPRM under §200.85(f)(2)(i) include authorized users at the SEA, its LOAs, and LEAs in the State that are not LOAs but where a migratory child has enrolled. One commenter recommended that the types of authorized users be broadened, in the interest of including individuals who serve out-of-school youth, but who are not SEA, LOA, or LEA personnel.

One commenter expressed support for the requirements for data protection, and opposed granting access to MSIX data and records to parties, such as other agencies and government bodies, other than the authorized users from entities listed under proposed §200.85(f)(2)(i). On the other hand, the commenter recommended that the Department consider developing a procedure for parents, guardians, and current or former migratory children to access a child's MSIX record without needing to be granted access to the MSIX system as an authorized user, via the creation of a simple, uniform record request form, available both in paper and online. The commenter further proposed that such a request form be used to produce two possible versions of

MSIX records (one more limited than the other), citing the benefits of such a process for college applications, job applications, and applications for Deferred Action for Childhood Arrivals.

Discussion: In response to the commenter's concerns regarding the cost and burden associated with the written procedures required by §200.85(f)(2), we note that the regulations do not prescribe a single set of procedures for all States. Rather, they allow each SEA the flexibility to design their own State-specific procedures. We have considered ways to alleviate the burden of writing the required procedures, and have developed templates as well as online training and training toolkits for State officials to use. We plan to provide technical assistance to States in utilizing these resources.

In response to the same commenter's recommendation that MSIX maintain the necessary documentation on authorized users required of SEAs under §200.85(f)(4), we will explore the feasibility of having MSIX generate and maintain this documentation. At this time, the system does not contain this functionality, so we will not now revise §200.85(f)(4) to eliminate the SEA's responsibility to maintain this documentation. We also note that, although the Department has developed and disseminated an OMB-

approved MSIX User Application Form (OMB Control Number 1810-0686), the regulations do not require SEAs to use this form as long as they maintain documentation that contains the information reflected on the OMB-approved form.

We also do not agree that it is appropriate at this time to broaden the types of MSIX authorized users to allow SEAs to permit access beyond those users at the SEA, LOA, or non-MEP funded LEA levels. However, we recognize that there may be benefits to migratory children in allowing certain non-SEA, LOA, or LEA users, including parents, guardians, and current or former migratory children, to access MSIX. The Department will examine the MSIX system of records notice, published in the Federal Register under the Privacy Act on December 5, 2007 (72 FR 68572), to consider the costs, benefits, and feasibility of authorizing additional groups of users. Consultation with States, and further study, are needed to assess the potential risks and benefits of broadening the types of authorized users, while ensuring that the system is still being used only for its limited purposes and also affording the maximum benefits to migratory children.

In response to the recommendation for a uniform records request form for parents, guardians, and current and former migratory children to gain access to a child's

MSIX record without being granted access to MSIX as an authorized user, we recognize the benefits of enabling parents, guardians, and former and current migratory children to access their MSIX records. However, we believe there are sufficient procedures in place to allow parents, guardians, and migratory children to request a copy of the child's MSIX record. Currently, each LOA and SEA, as well as the Department, has its own procedures for providing migratory children (and parents or guardians of migratory children) a copy of a child's MSIX record. For example, in order to request a copy of the MSIX record from the Department, a requestor must contact the Office of Migrant Education.⁴ We encourage migratory children and parents to request such records at the LOA or SEA level prior to submitting such a request to the Department. In addition, we will consider developing more detailed guidance for LOAs and SEAs to make the process for parents, guardians, and migratory students themselves to request the MSIX record as straightforward and user-friendly as possible.

Changes: None.

Comments: One commenter requested the Department to reconsider the current MSIX security measure that blocks

⁴ OME may be contacted at: U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., Washington, DC 20202. Phone: (202) 260-1164. Email: msix@ed.gov.

MSIX access for authorized users after a 30-day period of inactivity. The commenter was concerned that MSIX authorized users in school districts where migratory children do not enroll regularly will face delays in reactivating access to the system when needed.

Discussion: We appreciate the commenter's recommendation and will look into this matter. However, the comment is outside the scope of our proposed regulations.

Changes: None.

Regulatory Impact: Costs and Burden Associated with the Regulations

Comments: Several commenters expressed concerns about the costs and burden associated with the implementation of the regulations. One commenter acknowledged the benefit of creating a uniform system for the transfer of educational records between school districts, but stated that the costs to SEAs estimated in the NPRM seem too low. The same commenter questioned the lack of data to show how the regulations will directly benefit migratory students academically. One commenter stated that the costs to small States (which we understand to mean States with relatively smaller numbers of migratory children or relatively small annual awards of MEP funds) of implementing these regulations could jeopardize the sustainability of the MEP

in those States. One commenter asked the Department to state the amount of funds it plans to allocate to SEAs for planning, implementation, and recurring annual costs of the system; and further requested that, in allocating such funding to SEAs, the Department consider the varying costs of personnel services. One commenter suggested a less costly alternative approach would be to improve the existing records systems currently used by States.

Discussion: We appreciate the commenters' concerns and recommendations, and agree with them in part. In response to the commenter that stated that the estimated costs to SEAs in the NPRM seemed too low, we note that the commenter did not propose a more accurate cost estimate. We have developed the cost estimates based upon consultation with stakeholders, and believe them to be reasonable. We acknowledge that estimates will not be an exact reflection of actual costs borne by each SEA. We are updating the cost and burden estimates to reflect the most current data we have available.

While it is difficult to quantify the benefits of these regulations, including specific academic benefits to migratory children, they will provide important benefits to migratory children and their families and to States and LOAs, as discussed in more detail in the Regulatory Impact

Analysis section of this document. We issue these regulations on a reasoned determination that they reflect the best way to implement State responsibilities under section 1308(b) of the ESEA, and that the benefits of these regulations will justify their costs. In response to the commenter concerned about the effect of implementation costs on small States, and the commenter that asked the Department to state the amount of funds it plans to allocate to SEAs, we plan to assist States in implementing these regulations through additional technical assistance, guidance, and other resources to alleviate the costs and other burdens imposed on SEAs. In addition, we will consider the feasibility of providing additional funds to SEAs specifically for MSIX implementation purposes, following consultation with MEP grantees. During this consultation process, we will consider information provided by SEAs on the varying additional costs expected as a result of these regulations.

In response to the commenter who recommended the improvement of existing State records systems as a less costly alternative to the requirements contained in these regulations, we are confident that the approach reflected in these regulations will maximize net benefits to migratory children. We encourage all SEAs to improve their

existing records systems in order to ensure data quality, and to maximize the benefits to the migratory children whose records are contained in such systems. However, we do not believe that the improvement of individual State systems is an acceptable substitute for the use of MSIX, as provided in these regulations, because MSIX has several unique functions that cannot be realized by individual State systems. Among these unique functions are the consolidation of both intra- and inter-State data into a single Consolidated Student Record; identification of near-matches (i.e., the system identifies possible duplicate records, which are automatically added to "worklists" for the SEA to resolve) from a national pool of migratory children; and timely access to such records anywhere in the Nation.

Changes: We have changed the cost and burden estimates to reflect the most up-to-date data. Updated cost and burden estimates are found in the Regulatory Impact Analysis section of the preamble.

Clarity of the Regulations

Comments: One commenter responded to the six bulleted questions regarding clarity of the regulations, found on page 79234 of the NPRM. The commenter stated that the requirements in the proposed regulations were not written

in plain language, and those regulations contained technical terms or other wording that interferes with their clarity. The commenter suggested that the Department include a glossary or synopsis understandable to a layperson. The commenter stated that the format of the regulations reduces their clarity, and could be improved by use of shorter sections, spacing, bullets, tables, and charts. For the Supplementary Information section of the preamble, the commenter suggested an outline of the proposed changes, including a synopsis of each change; and bulleted information. Finally, the commenter suggested that the Department could expect to receive more public comments if the information were presented in a clearer format, recommending: a numbered table of proposed changes; a brief description of the proposed changes and the timeframe with a reference to the pages in which the information may be found; full pages rather than columns; spaces between sections; and tables, charts, diagrams, and a table of contents.

Discussion: We appreciate the commenter's suggestions to improve the clarity of the regulations, and have made every effort to use plain language and present the information clearly in these final regulations. We are required to use a specific format for Federal Register documents, so some

of the commenter's suggestions, while helpful, are simply not feasible. We will keep the commenter's suggestions in mind for technical assistance and guidance documents that follow publication of the final regulations.

Changes: None.

Paperwork Reduction Act: Costs and Burden Associated with Information Collection

Comments: Four commenters addressed the information collection associated with these regulations in response to the NPRM. Because those four comments were submitted in the NPRM public comment period, we summarize and respond to those four comments here. The Department received four additional comments regarding the information collection, but those comments were submitted in the ICN public comment period for the 72 MDEs, which was filed under a separate docket. In accordance with PRA procedures, those four comments submitted in the ICN public comment period will be addressed separately, in the Department's correspondence with OMB.

One commenter expressed support for the information collection requirements associated with the regulations, stating that the administrative costs and burden are outweighed by the benefits to migratory children.

In response to our statement in the ICR Supporting Statement that there should be no additional record-keeping costs beyond those covered under customary and usual business practices, one commenter contended that these record-keeping costs are a strain for small States with limited funds (particularly for States that have had an increase in numbers of migratory children without a correlating increase in their grant award). Thus, the commenter asserted that, although the regulations might minimize the burden for larger States, they do not do so for small States. One commenter acknowledged that aspects of the proposed collection are necessary and practical, but objected to the timeframes required by the regulations. The commenter stated that the burden estimates and methodology appear to be sound for larger States, but the needs and realities of smaller States with fewer funds are not addressed. The commenter stated that the information collection would, in theory, enhance the quality, usefulness, and clarity of the information collected by the Department, but alternative models would be less burdensome for certain States. (We note that the commenter did not elaborate on the specifics of such alternative models.)

One commenter expressed concern that collecting information for additional MSIX data fields needed for

child count or other reporting requirements would impose unnecessary fiscal and labor burdens for States because States would need to fund the process for matching and/or converting data elements from their State student information system to MSIX. The commenter asserted that the collection of such information is not reasonable and necessary because States already have a legitimate, widely acceptable system to provide data to the Department.

Discussion: The Department appreciates the support expressed for the information collection requirements associated with these regulations. We believe that the benefits of the regulations will outweigh the incremental costs that States, including small States, will incur as a result. We note that these requirements stem from our statutory responsibility in section 1308(b) of the ESEA, and are based in large part on our prior consultation with stakeholders, including those from smaller States. We also note that the information collection requirements mandate the data elements that States must collect and maintain, but we do not regulate on the specific methodology that each State must use to collect the necessary data or the systems that States use. Large and small States alike are encouraged to use systems and methods for data collection and record-keeping that they find to be most efficient and

cost-effective. We will continue to provide technical assistance and guidance to all States in identifying the most efficient and cost-effective methods for data collection, and facilitate interstate coordination to allow States to share best practices with one another.

In response to the commenter who expressed concerns about the collection of information in MSIX through additional data fields necessary for child count or other reporting purposes, we note that we are not requiring any additional data elements at this time other than MDE 72, the Out-of-State Records Flag, which indicates whether or not one of the State's LOAs have received secondary school records from another State for the secondary school-aged migratory child for whom an SEA has approved a new COE. The information needed for child counts and producing national data on the migratory population is currently collected by States under the ICRs for the Department's EDFacts and CSPR, and based on requirements for the MEP COE and in related regulations. As for other data elements, the process for matching and/or converting data elements from State systems to MSIX, and the associated costs and burden, will be a one-time cost and, other than the new MDE 72, will only apply to the 23 States that have not already undergone such linkage as of June 2015 for all MDEs.

Please see the discussion in the Alternative Methods for Collecting and Reporting Data section for the Department's rationale for utilizing MSIX to generate a child count and produce national data on the migratory population. We address comments with respect to the timeframes for collecting the required MSIX data in the MSIX Data Submission Requirements--General Timelines (§200.85(b)(1)) section.

Changes: None.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives

and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In this regulatory impact analysis we discuss the need for regulatory action, and the potential costs and benefits. The need for this regulatory action is based on statutory requirements that SEAs provide for educational continuity through the timely transfer of pertinent school records when migratory children move from one school to

another, regardless of whether such move occurs during the regular school year (see section 1304(b)(3) of the ESEA), as well as the statutory requirements that the Secretary: (a) assist States in the electronic transfer of student records, and (b) ensure the linkage of migrant student records systems for the purpose of electronically exchanging, among the States, health and educational information regarding all migratory students (see section 1308(b) of the ESEA). We have used the most up-to-date data available to estimate the burden of these regulations on SEAs and have considered ways to alleviate this burden. We have concluded that the costs of these regulations are outweighed by the benefits to migratory children of having up-to-date educational and health information for all migratory children available on a timely basis in order to facilitate school enrollment, grade and course placement, credit accrual, and participation in the MEP.

Need for Regulatory Action

The Secretary believes that the regulations are necessary for the Department to effectively implement the requirement in section 1308(b) of the ESEA that the Secretary ensure the linkage of migrant student record systems and for the effective implementation of the MEP by States and LOAs serving migratory children. This

congressionally mandated records transfer system will help SEAs, LEAs, and LOAs meet the needs of migratory children by having complete, accurate, and up-to-date educational and health information immediately available to school and program staff where migratory children enroll after they move.

Until now, all but one State receiving MEP funds has voluntarily entered some MDEs into MSIX. However, there is not consistency in the timeframes within which States enter these data, or in the completeness of data that each State enters for its migratory children. These regulations establish basic rules governing the collection of MDEs that States receiving MEP funds will need to submit to MSIX, so that when migratory children move and enroll in new schools and programs, staff in those schools and programs may make timely and appropriate decisions to facilitate school enrollment, grade and course placement, accrual of secondary course credits, and participation in the MEP.

Under the regulations, States receiving MEP funds will need to provide three categories of MDEs: (1) core data elements (which include demographic and enrollment data), (2) assessment data, and (3) course history data (which under the regulations pertain only to secondary school-aged children).

Potential Costs and Benefits

We have updated the cost and burden estimates contained in this section to reflect the availability of more up-to-date data from MSIX, CSPRs, and the U.S. Bureau of Labor Statistics National Compensation Survey: Occupational Earnings in the United States. As described in the following paragraphs, the Department estimates that the total cost to participating SEAs of implementing these regulations is approximately \$17,363,639 for the first year, and \$16,431,718 annually thereafter. The estimated burden per migratory child, amortized over three years, is approximately one hour and 30 minutes, at an approximate cost of \$46.50 per year. These estimates cover all regulatory requirements, including the costs of information collection activities, which are discussed separately under the heading Paperwork Reduction Act of 1995. Estimates are based on the initial three-year period for which we anticipate OMB will approve the information collection associated with these regulations.

As of July 2015, of the 47 States that currently receive MEP funds: 27 States have provided complete start-up submissions for all MDEs; 19 States have provided partial start-up submissions; and one State has not provided any data to MSIX. Three of the 50 States (not

including the District of Columbia, the Commonwealth of Puerto Rico, or the outlying areas) do not currently receive MEP funds or identify migratory children, and MDEs for migratory children in those States are not being updated in MSIX. Although 47 States currently receive MEP funds, our burden estimates are based on 50 States, in order to account for possible burden increases should all three of the currently non-participating States choose to participate in the MEP during the first three years that the regulations become effective. We do not anticipate that the District of Columbia, the Commonwealth of Puerto Rico, or the outlying areas will participate in the MEP in the first three years that the regulations become effective, given that none of these entities have participated in the MEP in the previous decade. Basing the estimate on 50 States is consistent with the NPRM. The first-year estimate excludes start-up costs that have already been incurred by participating SEAs since MSIX began operating in 2007, as well as costs for using records, data quality, data protection, and data correction (activities required under §200.85(c)-(f)) for those 27 States that have provided complete start-up submissions.

These costs will not all be borne by the States and their LOAs; the Department provides both monetary and non-

monetary resources to assist States in implementing MSIX activities successfully. For example, in 2007, the Department paid contractors to work with States to develop system interfaces that connect State data systems housing migrant student data to MSIX. In 2008 and 2010, the Department provided funding to States under the MSIX Data Quality grant program that could be used for developing these interfaces, improving the quality of migrant student data, and developing and implementing procedures for submitting data to MSIX. Pending consultation with States, the Department may provide similar resources in the future to assist in the implementation of these regulations. In addition, the Department has provided extensive technical assistance to States on issues of data quality and security, most recently to 23 States through the MSIX Data Quality Initiative (DQI), but also through the State Longitudinal Data System program and as part of the implementation of the EDFacts system. Each of these activities reduced the costs of implementing these regulations. Further, and most importantly, States may use MEP funds to cover the costs associated with implementing the regulations (albeit with the result that funding is then unavailable for other MEP activities). A more

detailed discussion of the costs of each regulatory requirement follows.

To help calculate the time estimates associated with the data submission requirements, the Department used the median number of minutes provided in March 2012 by officials in eight of the nine States with varying numbers of migratory children surveyed regarding the time it takes them to collect and enter these data in their State data systems. Estimates of the numbers of migratory children for whom States will submit information to MSIX were derived from CSPRs for the 2013-2014 performance period and include the number of migratory children ages 0-21 that States reported as MEP-eligible in performance period 2013-2014 (364,227); the number of MEP-eligible K-12 children enrolled in school (269,538); the number of MEP-eligible secondary school students (76,008); and the number of MEP-eligible students reported as having taken State assessments (78,865). The hourly cost used for these estimates was \$35.67, the mean hourly earnings for State and local government management, professional, and related occupations reported in June 2015 by the U.S. Bureau of Labor Statistics in its National Compensation Survey: Occupational Earnings in the United States.

We estimate that the one-time cost for providing start-up submissions to MSIX under §200.85(b)(2), excluding costs that were incurred by States before these regulations, is approximately \$324,685.

That figure assumes that State and local officials take approximately 53 minutes per migratory child to collect, enter into the State data system, and submit to MSIX general demographic and enrollment MDEs that pertain to all migratory children who have been documented by the State as MEP-eligible; approximately 5 minutes per student for the MDEs pertaining only to migratory students who participate in State assessments; and approximately 55 minutes per student for the course history MDEs pertaining only to migratory secondary school students. Although we expect that the aforementioned revision made in these final requirements for start-up data submissions will reduce burden for States compared to the proposed requirements, the burden estimates are, consistent with the NPRM, based on the numbers of eligible migratory children reported by States in the CSPR. States report the number of eligible migratory children who resided in their State for at least one day during the entire performance period, rather than the number of eligible migratory children that resided in their State on a specific date. Therefore, the burden

estimates for start-up submissions are likely to be over-estimates, but we believe this is preferable to under-estimating the burden.

We estimate that the annual costs for complying with §200.85(b)(3), which covers subsequent submissions to MSIX of data on migratory children for whom an SEA has approved a new COE, updates to MSIX at the end of every school term, and updates to MSIX if a receiving State or LOA notifies a sending State or LOA that a migratory child has moved, will be approximately \$16,196,509.

Within that estimate, we estimate the annual costs of implementing the requirements under §200.85(b)(3)(i), covering collection and submission of data to MSIX for migratory children for whom an SEA has approved a new COE, at \$6,717,174. We estimate the annual number of migratory children for whom an SEA has approved a new COE to be 115,415, based on the number of qualifying moves for migratory children that States reported to the Department in section 2.3.1.5 of the CSPR for school year 2013-2014. The number of migratory children for whom an SEA has approved a new COE and for whom there will be MDEs pertaining to assessment data (24,990) and secondary schooling (22,753) is based on the proportion of those students in the population of migratory children enrolled

in grades K-12 during school year 2013-2014. We assume the same time estimates used for calculating burden for collecting and submitting data for start-up submissions as are assumed for the calculations of other proposed data submission requirements under §200.85(b)(2). Based on responses to the Department's survey of States discussed above, we also estimate an additional effort of 1 hour and 10 minutes per student to collect data elements for a secondary student who previously attended another secondary school in the same State (§200.85(b)(3)(i)(B)(1)) and another 42 minutes to determine if, and notify MSIX when, a LOA has received secondary school records from out of State for a secondary school-aged migratory child for whom an SEA has approved a new COE (§200.85(b)(3)(i)(B)(2)).

The cost estimate for implementing the requirements under §200.85(b)(3)(ii), end of term submissions, is \$9,312,332. The estimate assumes that States update MDEs for every migratory child once over the course of each year for most, but not all, of the MDEs pertaining to all migratory children, and that the effort will take approximately 42 minutes per migratory child. This estimated burden, based on the experience of Department staff who have worked on migrant programs at the State level, also assumes a smaller burden for this effort than

that for start-up data submissions because some States have developed automated processes for collecting this information and providing these updates to MSIX.

Many of the MDEs in a migratory student's record must be updated every year; for example, when a student finishes a grade level, the student must be marked as "withdrawn" from that grade, and when the student enters the following grade the next school year the student is then marked as "enrolled" in the new grade. Indeed, States may update a student's MSIX record throughout the school year, but will likely need to do so only once a year. There are a smaller number of MDEs, such as birth city, that would not require an update. The end of term cost estimate assumes that States will need five minutes per affected student for the MDEs pertaining to State assessments, as those assessments are administered once a year. The Department's estimate also assumes 55 minutes per migratory student for the MDEs pertaining only to migratory secondary school students, in accordance with the surveyed States' estimated average burden for MDEs for secondary school students regardless of the number of courses in which secondary school students were enrolled.

The estimate for the annual costs of implementing the requirements under §200.85(b)(3)(iii), change of residence

submissions, is approximately \$167,002. This estimate is based on the 2,497 requests that receiving States or LOAs (i.e., States or LOAs where migratory children moved) made through MSIX in the 2013-2014 school year to request records from sending States or LOAs (i.e., a child's previous place of enrollment). Apart from the end of term data submission requirements, the regulations require a sending State to update a student record only if it receives notification from a receiving State or LOA through MSIX that it has enrolled a migratory child formerly enrolled in the sending State. However, the regulations do not require receiving States (or their LOAs) to notify the migratory child's former location that the migratory child has changed residence. This allows a State or LOA enrolling a migratory child flexibility to send a notification (through MSIX) to a child's former location, requesting an updated student record, only if the child's MSIX record is missing data.

Furthermore, §200.85(b)(3)(ii) requires SEAs to update MSIX MDEs at the end of each term; therefore, States and LOAs are more likely to use MSIX to request records from a previous location under §200.85(b)(3)(iii) for children moving in the middle of the term. An analysis of MSIX data on the timing of migratory child moves during school year

2013-2014 showed that approximately 59 percent of the moves occurred during the summer months, after the end of the school year. Including January moves, 65 percent of all moves occur between terms, which should limit the number of data submissions required under the change of residence provision in §200.85(b)(3)(iii).

The estimate for the total costs of implementing the requirements under §200.85(c), using Consolidated Student Records contained in MSIX; §200.85(d), establishing rules pertaining to the quality of data submitted to MSIX; and §200.85(f), establishing rules pertaining to the protection of data submitted to MSIX, is approximately \$841,309 for the first year and \$234,072 for each subsequent year. The main costs for implementing these requirements are associated with the time that will be needed for States to establish policies and procedures to address the use of MSIX, data quality, and data protection; develop and disseminate the guidance and procedures to State and local personnel; and provide training to State and local personnel who have access to MSIX. Many of these costs will be one-time costs.

To minimize the burden on States of implementing these requirements, the Department developed a template for a State manual that we believe will assist States in

developing policies and procedures for using MSIX, ensuring data quality, and protecting the data. The Department also developed online training and a training toolkit that State officials may choose to use in carrying out training within their States. Based on the experience of Department staff who have worked on migrant programs at the State level, we estimate that each State will spend approximately 120 hours developing policies and procedures with the aid of the template. Using the same cost per hour used for the data submission requirements, the total one-time cost of establishing policies and procedures will be an estimated \$59,926. To calculate the costs of training State and local personnel in the use of MSIX and associated policies and procedures, we estimate 3.5 person-hours per State for using the Department's training toolkit to develop and conduct training for MSIX users--up to 4 training of trainer sessions plus each MSIX user spending 2 hours completing training. We estimate 3,525 individuals will complete training during year 1 and approximately 370 additional individuals will complete training each subsequent year. This estimate is based on 2,820 current active users, which is expected to increase by 25 percent during the first year these regulations are implemented and by 10 percent for each of the following two years. Based

on the same cost per hour used for the data submission requirements, the total training cost is an estimated \$276,443 for the first year and \$51,374 each subsequent year.

In addition, State personnel will likely need the assistance of an information technology professional to run reports and monitor the data collected and submitted to MSIX, review system security, and work with other State or local personnel to remedy any data concerns or problems. We estimate that, for States that have not fully implemented MSIX, it will take 32 hours per month per State for one information security analyst, and that for other States it will take 8 hours per month. At \$36.59 an hour (the mean hourly earnings for information security analysts in State government, excluding schools and hospitals, reported by the U.S. Bureau of Labor Statistics in its National Compensation Survey: Occupational Earnings in the United States, 2014), we estimate the services of these information security analysts will cost \$323,163 for year 1 and, assuming all States are fully implementing MSIX by the end of year 1, \$175,632 each subsequent year. The estimate includes an additional \$128,968 for complying with §200.85(c), which concerns use of MSIX's consolidated student records, to meet costs associated with development

of electronic interfaces and communications between State data systems and MSIX. The Department provided resources to assist States with this work, as discussed earlier, and estimates that the burden associated with doing this work is approximately 1,816 hours for States that have not fully implemented MSIX and 1,800 hours for all States to implement the new MDE. The estimate further includes \$52,809 for complying with the requirement in §200.85(f) that MSIX users fill out user application forms. We estimate completing the form will take 5 minutes, and a supervisor will take 20 minutes to review a user application form and other documentation to determine whether to grant access to MSIX to an applicant. In total, we estimate it will take 25 minutes to grant access to each user. The cost estimate is based on 3,525 users for year 1 (as discussed previously) and the same labor cost as that used to calculate the proposed data submission requirements. For subsequent years the cost is approximately \$5,545 based on an estimated additional 370 users per year.

The estimated cost of implementing the requirements under §200.85(e), procedures for MSIX data correction by parents, guardians, and migratory children, is approximately \$1,137. Based on responses to the

Department's survey of States discussed above, we estimate each State will receive one request to correct data per year and that each request will take approximately 38 minutes to acknowledge, review, make any necessary corrections to the data, and notify the requester of the resolution to the request. In addition, based on prior experience, we estimate the Department will receive six data correction requests per year from parents, guardians, or migratory children, and anticipate that States will similarly require an average of 38 minutes to address any Department requests on this matter. The cost per hour used is the same as that used to estimate start-up data submissions.

While it is difficult to quantify the benefits of these regulations, we believe that they will provide important benefits to migratory children and their families, States, and LOAs, particularly for the approximately 32 percent of migratory children who make an MEP-qualifying move across school district boundaries each year (based on State CSPR data for performance period 2013-2014). Instantaneous access to records of children who have previously been identified as MEP-eligible will reduce the time it takes school personnel to enroll those children in new schools and place them in appropriate classes.

Prompt placement is necessary not only to ensure continuity of education, but also to ensure that migratory children receive the maximum benefits from the school's regular program as well as MEP services, as the MEP limits the amount of time that migratory children may receive services. In addition, prompt access to records reduces the likelihood of duplication of services and helps ensure that migratory children are placed in the right classes, which reduces the likelihood that a child will repeat classes or be placed in an inappropriate class, and thus also the likelihood that the child will suffer academically and emotionally. For secondary school students, having a record documenting credit accrual increases the likelihood that a migratory child will graduate from high school on time. In addition, instant access to records of children who have previously been identified as MEP-eligible will assist school districts and states in complying with their federal civil rights obligations to ensure that all students, regardless of background, have timely and equal access to educational opportunities. And because migrant students often enroll without adequate, and in many cases any, documentation of their educational and health history, full MSIX implementation will help school districts and states ensure that students are not chilled or discouraged

from accessing educational opportunities because of lack of documentation or because of their actual or perceived immigration status.

As MSIX includes information about where immunization records are available, it helps prevent duplication of vaccinations, an unnecessary additional expense for families and community health systems. Most States require students to be vaccinated, at a minimum, for polio, diphtheria, tetanus, pertussis, measles, mumps, rubella, hepatitis B, and varicella. The combined cost per dose as of July 2015 for these pediatric vaccinations under the Center for Disease Control vaccine contracts (established for the purchase of vaccines by immunization programs that receive CDC immunization grant funds, such as State health departments) was approximately \$153, and the average cost of the same vaccines to the private sector was approximately \$230. Reducing duplicate vaccinations also preserves the vaccine supply for others in the community. In addition, MSIX incorporates a flag for students with acute or chronic medical conditions, thus instantly alerting authorized MSIX users to the fact that a migratory child may need additional support services and referrals to medical care.

We further note that these regulations were informed by the Department's and the States' previous experience implementing a migrant student record transfer service from the 1970s through the 1990s. The Migrant Student Record Transfer System (MSRTS) was a national, computer-based system for records collection and transfer established in response to a 1969 congressional mandate requiring the creation of a service for transmitting educational and health records for migrant students. MSRTS was terminated in 1995 due to concerns about the accuracy and usefulness of the data in the system, and the lack of uniformity in the data that States reported to the system. In addition, many users considered MSRTS too slow and burdensome, as the computer technology relied largely on a paper-based system for collecting and reporting information that did not incorporate technological advancements efficiently. These regulations are designed to ensure that MSIX users have ready access to complete, trustworthy, up-to-date records.

The requirement that agencies serving migratory children use MSIX and the Consolidated Student Records MSIX generates will ensure not only that information in MSIX is used, but also that State and LOAs acquire an interest in ensuring the quality and timeliness of the data they provide to and obtain from the system. Other benefits

include access to Consolidated Student Records that are current, accurate, complete, and secure, and that contain data that may be currently maintained in different systems within States; for example, State assessment data may not be maintained in the same system as student health records. States' previously voluntary participation in MSIX reflects the value they see in having this information on migratory children in one centralized location, which enables them to better serve one of their most vulnerable populations.

For these reasons, the Department believes that the benefits of these regulations will significantly exceed the estimated costs, much of which would be met with Federal resources.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995

Section 200.85 contains information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department has submitted a copy of this section as part of the Information Collection Request (ICR) package to OMB for its review. An approved OMB control number will be assigned to this new ICR following the publication of the final rule.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

MDEs consist of 72 data elements that reflect the minimal educational and health information needed to ensure proper enrollment, grade and course placement, accrual of secondary course credits, and participation in the MEP for migratory children. The MDEs, and the various information sources through which they are currently obtained, would not change as a result of these regulations except for the collection of one new MDE, the Out-of-State Records Flag, which only applies to secondary school-aged migratory children for whom an SEA has approved a new COE. The Out-of-State Records Flag indicates whether one of the State's LOAs has received records from a secondary school attended previously in another State, by the secondary school-aged migratory child for whom an SEA has approved a new COE. The MDE does not require SEAs or LOAs to collect and submit

the out-of-state secondary school records to MSIX, but simply to indicate whether or not an LOA has obtained such records.

Thirty of the MDEs are collected and entered into State data systems through the ICRs for the Department's EDFacts (OMB Control Number 1875-0240, approval first granted October 17, 2007) and for the MEP COE and related regulations (OMB Control Number 1810-0662, COE approval first granted September 5, 2008). We do not account here for the burden of collecting, maintaining, and submitting to MSIX these 30 MDEs because these MDEs are already collected and maintained for other purposes, and we have assumed that submission of these MDEs to MSIX will occur automatically once a State's electronic interface with MSIX has been established.

Forty-one of the remaining 42 MDEs are collected and entered into the State data systems under the existing MSIX ICR (OMB Control Number 1810-0683). These regulations create a new MDE. The regulations also specify the parties to whom the collection applies as well as establish specific timelines for data collection and submission to MSIX. As a result, we have amended and restated the MSIX ICR to reflect, among other things, a new burden analysis and supporting statement.

Section 200.85--Responsibilities of SEAs for the Electronic Exchange Through MSIX of Specified Educational and Health Information of Migratory Children.

Section 200.85 requires SEAs to collect, maintain, and submit to MSIX educational and health information on migratory children. This information will enable SEAs and their LOAs to reduce educational disruptions for migratory children, make timely and accurate school placements, ensure academic credit for school work completed, streamline academic progression toward graduation requirements, and promote the use of complete academic records as needed for postsecondary education and employment opportunities. The exchange of health-related information through MSIX will also help reduce unnecessary immunizations of migratory children which might otherwise occur due to lack of timely, accurate health information.

Estimates of Annualized Burden to SEA Respondents

For the 42 MDEs not covered by other ICRs, the total burden for all SEA respondents in the first three years after the effective date of the regulations is estimated at 463,803 hours per year. This amounts to an average of 9,276 hours per year for each of the 50 SEAs. Because the number of MEP-eligible children varies greatly among the States, we have estimated the overall burden as 1,273 hours

annually per 1,000 MEP-eligible children to enable individual SEAs to assess the burden of the information collection.

These estimates were developed by program and contract staff with experience in the State-level administration of the MEP, based upon consultation with States, analysis of the information reported by each State in its 2013-2014 CSPR (OMB Number 1810-0614), and State data submitted previously to MSIX. The estimated burden to collect the MDEs includes the effort to enter the data in the appropriate State information systems for electronic transmission to MSIX.

In calculating the burden of this information collection, we have not included the burden associated with start-up submissions previously made to MSIX in whole or in part. In calculating the burden associated with subsequent data submissions, our estimates quantify the total annualized burden to SEAs, and do not specify the incremental burden to those SEAs that have previously collected, maintained, and submitted to MSIX any or all of the MDEs covered by the MSIX ICR relating to subsequent data submissions.

See the discussion below for a further explanation of the burden related to specific regulatory provisions.

Start-up Data Submissions (§200.85(b)(2))

As of June 2015, 27 States had already met the requirement to collect and submit to MSIX MDEs for every MEP-eligible child in the State; an additional 19 States had provided partial start-up submissions; and 4 States have not provided any start-up submission data to MSIX. We used these figures for our calculations of start-up data submissions. Submissions of MDEs needed as start-up data is a one-time requirement for each SEA; submissions are required to be completed no later than 90 calendar days after the effective date of the final regulations. Amortized over three years, the annualized burden of the requirement for the remaining 23 States is estimated to be 9,102 hours per year in total and 396 hours per year per SEA. All subsequent data submission requirements are covered by the other information collection activities described below.

Migratory Children for Whom an SEA has Approved a New COE (§200.85(b)(3)(i)(A))

The annualized burden to implement the requirement for 50 States to collect and submit the MSIX MDEs within 10 days of newly documenting the eligibility of each migratory child is estimated at 123,928 hours per year in total and 2,479 hours per SEA. Documenting the eligibility of

migratory children is an ongoing process, and we estimate the burden would remain at a constant level in each of the three years that this information collection covers.

Migratory Children for Whom an SEA has Approved a New COE with Prior Secondary School Records in the Same State (\$200.85(b)(3)(i)(B)(1))

The annualized burden of the requirement for SEAs to collect and submit to MSIX MDEs from the most recent secondary school attended previously within the State is estimated at 26,545 hours per year in total and, on average, 531 hours per year per SEA. Collecting and submitting in-State secondary school information for migratory children for whom an SEA has approved a new COE is an ongoing process, and we estimate the burden would remain at a constant level in each of the three years that this information collection covers.

Migratory Children for Whom an SEA has Approved a New COE with Secondary School Records from Another State (\$200.85(b)(3)(i)(B)(2))

The annualized burden of the requirement for SEAs to notify MSIX within 30 days of obtaining out-of-state secondary school records for a migratory child for whom an SEA has approved a new COE is estimated at 38,441 hours per year in total, and to average 769 hours per year for each

SEA. Our burden estimate includes a one-time effort for each State to modify its State data system and MSIX interface to collect and submit a new MDE to indicate whether an LOA has out-of-state school records for a secondary school-aged migratory child for whom an SEA has approved a new COE (this one-year effort is amortized over the three years of the collection). Documenting migratory children is an ongoing process, and we therefore estimate that the burden will remain constant for each of the three years this information collection covers.

End of Term Submissions (§200.85(b)(3)(ii))

The annualized burden of the requirement to collect and submit updated and newly available MDEs to MSIX within 30 days after the end of each educational term for all migratory children is estimated at 261,069 hours per year in total, and to average 5,221 hours per year per SEA. This is an ongoing process, and we therefore estimate that the burden will remain constant for each of the three years this information collection covers.

Notice of Change of Residence Submissions
(§200.85(b)(3)(iii))

The annualized burden of the requirement to collect and submit to MSIX all new and updated MDEs within four working days of receiving notification from MSIX that a

migratory child has changed residence is estimated at 4,682 hours per year in total, and to average 94 hours per year per SEA. This is an ongoing process, and we therefore estimate the burden will remain constant for each of the three years this information collection covers.

Parental Request to SEAs for MSIX Data Correction
(§200.85(e)(1)(ii))

The annualized burden for SEAs to submit revised data to MSIX within 4 working days of the decision to correct previously submitted data following a request from a parent, guardian, or migratory child is estimated at 32 hours per year in total, and on average .6 hours per year per SEA. This is an ongoing process, and we therefore estimate the burden will remain constant for each of the three years this information collection covers.

Parental Request to the Department for MSIX Data
Correction (§200.85(e)(3))

The annualized burden for SEAs to respond within 10 working days to a request for information from the Department in order for the Department to respond to an individual's request to correct or amend a Consolidated Student Record under the Federal Privacy Act is estimated at four hours per year in total, and on average 0.1 hour per year per SEA. This is an ongoing process, and we

therefore estimate the burden will remain constant for each of the three years the information collection covers.

Collection of Information

Reporting Activity	Description	Total Burden
1. Start-up Data Submission §200.85(b) (2)	Collect and submit to MSIX all MDEs applicable to child's age and grade level for every migratory child eligible to receive MEP services in the State on the effective date of these regulations, other than through continuation of services provided under section 1304(e) of the ESEA.	9,102
2. Migratory Children for Whom an SEA has Approved a New COE §200.85(b) (3) (i) (A)	Collect and submit to MSIX all MDEs applicable to child's age and grade level for migratory children for whom an SEA has approved a new COE.	123,928
3. Migratory Children for Whom an SEA has Approved a New COE with Secondary School Records in the Same State §200.85(b) (3) (i) (B) (1)	Collect and submit all applicable MDEs from the most recent secondary school previously attended within the same State by the secondary school-aged migratory child for whom an SEA has approved a new COE.	26,545
4. Migratory Children for Whom an SEA has Approved a New COE with Secondary School Records from Another State §200.85(b) (3) (i) (B) (2)	Notify MSIX if one of its local operating agencies obtains records from a secondary school previously attended in another State by the secondary school-aged	38,441

	migratory child for whom an SEA has approved a new COE.	
5. End of Term Submissions §200.85(b) (3) (ii)	Collect and submit to MSIX all MDE updates and newly available MDEs for migratory children who were MEP-eligible during the term and for whom the SEA previously submitted data.	261,069
6. Change of Residence Submissions §200.85(b) (3) (iii)	Collect and submit to MSIX all newly available MDEs and MDE updates that have become available to the SEA or one of its local operating agencies.	4,682
7. Parental Request for MSIX Data Correction §200.85(e) (1) (ii)	If an SEA determines that data previously submitted to MSIX should be corrected as the result of a request from a parent, guardian, or migratory child, the SEA must submit revised data.	32
8. Response to the Department §200.85(e) (3)	Submit information requested by the Department needed to respond to an individual's request to amend a Consolidated Student Record under the Privacy Act.	4

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

In the NPRM we identified a specific section (§200.85) that may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the Analysis of Comments and Changes section of this preamble, we discuss any comments we received on this subject.

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Title I, Education of Migratory Children)

List of Subjects in 34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs-education, Indians-education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

Dated: May 3, 2016

John B. King, Jr.,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200--TITLE I--IMPROVING THE ACADEMIC ACHIEVEMENT OF
THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

AUTHORITY: 20 U.S.C 6301 through 6578, unless otherwise noted.

2. Section 200.81 is amended by:

a. Redesignating paragraphs (h) through (k) as paragraphs (m) through (p).

b. Redesignating paragraph (g) as paragraph (j).

c. Redesignating paragraphs (d) through (f) as paragraphs (f) through (h).

d. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively.

e. Adding new paragraphs (b), (e), (i), (k), and (l).

The additions read as follows:

§200.81 Program definitions.

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(b) Consolidated Student Record means the MDEs for a migratory child that have been submitted by one or more

SEAs and consolidated into a single, uniquely identified record available through MSIX.

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(e) Migrant Student Information Exchange (MSIX) means the nationwide system administered by the Department for linking and exchanging specified educational and health information for all migratory children.

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(i) Minimum Data Elements (MDEs) means the educational and health information for migratory children that the Secretary requires each SEA that receives a grant of MEP funds to collect, maintain, and submit to MSIX, and use under this part. MDEs may include--

(1) Immunization records and other health information;

(2) Academic history (including partial credit), credit accrual, and results from State assessments required under the ESEA;

(3) Other academic information essential to ensuring that migratory children achieve to high academic standards; and

(4) Information regarding eligibility for services under the Individuals with Disabilities Education Act.

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(k) MSIX Interconnection Agreement means the agreement between the Department and an SEA that governs the interconnection of the State migrant student records system(s) and MSIX, including the terms under which the agency will abide by the agreement based upon its review of all relevant technical, security, and administrative issues.

(l) MSIX Interconnection Security Agreement means the agreement between the Department and an SEA that specifies the technical and security requirements for establishing, maintaining, and operating the interconnection between the State migrant student records system and MSIX. The MSIX Interconnection Security Agreement supports the MSIX Interconnection Agreement and documents the requirements for connecting the two information technology systems, describes the security controls to be used to protect the systems and data, and contains a topological drawing of the interconnection.

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3. Section 200.84 is revised to read as follows:

§200.84 Responsibilities for evaluating the effectiveness of the MEP and using evaluations to improve services to migratory children.

(a) Each SEA must determine the effectiveness of its MEP through a written evaluation that measures the implementation and results achieved by the program against the State's performance targets in §200.83(a)(1), particularly for those students who have priority for service as defined in section 1304(d) of the ESEA.

(b) SEAs and local operating agencies receiving MEP funds must use the results of the evaluation carried out by an SEA under paragraph (a) of this section to improve the services provided to migratory children.

(Authority: 20 U.S.C. 6394)

4. Section 200.85 is revised to read as follows:

§200.85 Responsibilities of SEAs for the electronic exchange through MSIX of specified educational and health information of migratory children.

(a) MSIX State record system and data exchange requirements. In order to receive a grant of MEP funds, an SEA must collect, maintain, and submit to MSIX MDEs and otherwise exchange and use information on migratory children in accordance with the requirements of this section. Failure of an SEA to do so constitutes a failure under section 454 of the General Education Provisions Act, 20 U.S.C. 1234c, to comply substantially with a requirement

of law applicable to the funds made available under the MEP.

(b) MSIX data submission requirements—(1) General.

(i) In order to satisfy the requirements of paragraphs (b)(2) and (3) of this section, an SEA that receives a grant of MEP funds must submit electronically to MSIX the MDEs applicable to the child's age and grade level. An SEA must collect and submit the MDEs applicable to the child's age and grade level, regardless of the type of school in which the child is enrolled (e.g., public, private, or home school), or whether a child is enrolled in any school.

(ii) For migratory children who are or were enrolled in private schools, the SEA meets its responsibility under paragraph (b)(1)(i) of this section for collecting MDEs applicable to the child's age and grade level by advising the parent of the migratory child, or the migratory child if the child is emancipated, of the necessity of requesting the child's records from the private school, and by facilitating the parent or emancipated child's request to the private school that it provide all necessary information from the child's school records--

(A) Directly to the parent or emancipated child, in which case the SEA must follow up directly with the parent or child; or

(B) To the SEA, or a specific local operating agency, for forwarding to MSIX, in which case the SEA must follow up with the parent, emancipated child, or the private school to make sure that the records requested by the parent or emancipated child have been forwarded.

(iii) For migratory children who are or were enrolled in home schools, the SEA meets its responsibility under paragraph (b)(1)(i) of this section for collecting MDEs applicable to the child's age and grade level by requesting these records, either directly or through a local operating agency, directly from the parent or emancipated child.

(2) Start-up data submissions. No later than 90 calendar days after the effective date of these regulations, an SEA must collect and submit to MSIX each of the MDEs described in paragraph (b)(1)(i) of this section applicable to the child's age and grade level for every migratory child who is eligible to receive MEP services in the State on the effective date of these regulations, other than through continuation of services provided under section 1304(e) of the ESEA.

(3) Subsequent data submissions. An SEA must comply with the following timelines for subsequent data submissions throughout the entire calendar year whether or

not local operating agencies or LEAs in the State are closed for summer or intersession periods.

(i) Migratory children for whom an SEA has approved a new Certificate of Eligibility. For every migratory child for whom an SEA approves a new Certificate of Eligibility under §200.89(c) after the effective date of these regulations--

(A) An SEA must collect and submit to MSIX the MDEs described in paragraph (b)(1)(i) of this section within 10 working days of approving a new Certificate of Eligibility for the migratory child. The SEA is not required to collect and submit MDEs in existence before its approval of a new Certificate of Eligibility for the child except as provided in paragraph (b)(3)(i)(B) of this section; and

(B) An SEA that approves a new Certificate of Eligibility for a secondary school-aged migratory child must also--

(1) Collect and submit to MSIX within 10 working days of approving a new Certificate of Eligibility for the child MDEs from the most recent secondary school in that State attended previously by the migratory child; and

(2) Notify MSIX within 30 calendar days if one of its local operating agencies obtains records from a secondary

school attended previously in another State by the migratory child.

(ii) End of term submissions. (A) Within 30 calendar days of the end of an LEA's or local operating agency's fall, spring, summer, or intersession terms, an SEA must collect and submit to MSIX all MDE updates and newly available MDEs for migratory children who were eligible for the MEP during the term and for whom the SEA submitted data previously under paragraph (b) (2) or (b) (3) (i) of this section.

(B) When a migratory child's MEP eligibility expires before the end of a school year, an SEA must submit all MDE updates and newly available MDEs for the child through the end of the school year.

(iii) Change of residence submissions. (A) Within four working days of receiving notification from MSIX that a migratory child in its State has changed residence to a new local operating agency within the State or another SEA has approved a new Certificate of Eligibility for a migratory child, an SEA must collect and submit to MSIX all new MDEs and MDE updates that have become available to the SEA or one of its local operating agencies since the SEA's last submission of MDEs to MSIX for the child.

(B) An SEA or local operating agency that does not yet have a new MDE or MDE update for a migratory child when it receives a change of residence notification from MSIX must submit the MDE to MSIX within four working days of the date that the SEA or one of its local operating agencies obtains the MDE.

(c) Use of Consolidated Student Records. In order to facilitate school enrollment, grade and course placement, accrual of high school credits, and participation in the MEP, each SEA that receives a grant of MEP funds must--

(1) Use, and require each of its local operating agencies to use, the Consolidated Student Record for all migratory children who have changed residence to a new school district within the State or in another State;

(2) Encourage LEAs that are not local operating agencies receiving MEP funds to use the Consolidated Student Record for all migratory children described in paragraph (c)(1) of this section; and

(3) Establish procedures, develop and disseminate guidance, and provide training in the use of Consolidated Student Records to SEA, local operating agency, and LEA personnel who have been designated by the SEA as authorized MSIX users under paragraph (f)(2) of this section.

(d) MSIX data quality. Each SEA that receives a grant of MEP funds must--

(1) Use, and require each of its local operating agencies to use, reasonable and appropriate methods to ensure that all data submitted to MSIX are accurate and complete; and

(2) Respond promptly, and ensure that each of its local operating agencies responds promptly, to any request by the Department for information needed to meet the Department's responsibility for the accuracy and completeness of data in MSIX in accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(6) and (g)(1)(C) or (D).

(e) Procedures for MSIX data correction by parents, guardians, and migratory children. Each SEA that receives a grant of MEP funds must establish and implement written procedures that allow a parent or guardian of a migratory child, or a migratory child, to ask the SEA to correct or determine the correctness of MSIX data. An SEA's written procedures must meet the following minimum requirements:

(1) Response to parents, guardians, and migratory children. (i) Within 30 calendar days of receipt of a data correction request from a parent, guardian, or migratory child, an SEA must--

(A) Send a written or electronic acknowledgement to the requester;

(B) Investigate the request;

(C) Decide whether to revise the data as requested; and

(D) Send the requester a written or electronic notice of the SEA's decision.

(ii) If an SEA determines that data it submitted previously to MSIX should be corrected, the SEA must submit the revised data to MSIX within four working days of its decision to correct the data. An SEA is not required to notify MSIX if it decides not to revise the data as requested.

(iii) (A) If a parent, guardian, or migratory child requests that an SEA correct or determine the correctness of data that was submitted to MSIX by another SEA, within four working days of receipt of the request, the SEA must send the data correction request to the SEA that submitted the data to MSIX.

(B) An SEA that receives an MSIX data correction request from another SEA under this paragraph must respond as if it received the data correction request directly from the parent, guardian, or migratory child.

(2) Response to SEAs. An SEA or local operating agency that receives a request for information from an SEA that is responding to a parent's, guardian's, or migratory child's data correction request under paragraph (e)(1) of this section must respond in writing within ten working days of receipt of the request.

(3) Response to the Department. An SEA must respond in writing within ten working days to a request from the Department for information needed by the Department to respond to an individual's request to correct or amend a Consolidated Student Record under the Privacy Act of 1974, as amended, 5 U.S.C. 552a(d)(2) and 34 CFR 5b.7.

(f) MSIX data protection. Each SEA that receives a grant of MEP funds must--

(1) Enter into and carry out its responsibilities in accordance with an MSIX Interconnection Agreement, an MSIX Interconnection Security Agreement, and other information technology agreements required by the Secretary in accordance with applicable Federal requirements;

(2) Establish and implement written procedures to protect the integrity, security, and confidentiality of Consolidated Student Records, whether in electronic or print format, through appropriate administrative, technical, and physical safeguards established in

accordance with the MSIX Interconnection Agreement and MSIX Interconnection Security Agreement. An SEA's written procedures must include, at a minimum, reasonable methods to ensure that--

(i) The SEA permits access to MSIX only by authorized users at the SEA, its local operating agencies, and LEAs in the State that are not local operating agencies but where a migratory child has enrolled; and

(ii) The SEA's authorized users obtain access to and use MSIX records solely for authorized purposes as described in paragraph (c) of this section;

(3) Require all authorized users to complete the User Application Form approved by the Secretary before providing them access to MSIX. An SEA may also develop its own documentation for approving user access to MSIX provided that it contains the same information as the User Application Form approved by the Secretary; and

(4) Retain the documentation required for approving user access to MSIX for three years after the date the SEA terminates the user's access.

(Authority: 20 U.S.C. 6398)

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